But in this substitute, what I have done is specifically to point out that we reaffirm our own power under the Constitution to declare war—exactly what Representative ZABLOCKI did.

We also recognize that the President has the authority and the duty to defend the United States and its citizens. I do not think that anyone would disagree with that. I added the word "duty" because I think it is implicit in the whole oath of office that the President takes and in his concern for the interests of the United States.

I have also pointed out, as does the bill, that there are certain situations where he can deploy troops into hostilities or into the imminent involvement in those hostilities without prior authorization from Congress. The bill itself recognizes that, and this is all in section 1.

Then it says Congress should receive consultation from the President before he takes any of these actions, if he possibly can. Where he does not, then it requires that he come up and let Congress know why and let Congress know the extent and the scope and such other information as might be useful in the fulfillment of its constitutional obligations.

For the life of me, I can see nothing wrong with the substitute. As a matter of fact, I think it is good, because among other things it will give us something that we can get through this year.

If my guess is right, we are not going to get anything as the bill is written now, because it will fare badly if it ever gets to conference, or it will be changed around in the House according to the information I have. And if it does get through, I repeat that I strongly suspect the President will veto it.

This type of approach would give us the time to do some further work on this matter. I feel that we have an excellent chance of reinforcing a better exchange of informational resources between the executive department and the Congress of the United States.

Mr. President, I reserve the remainder of my time.

Mr. SPONG. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER (Mr. STEVENS). The Senator from Virginia is recognized for 5 minutes.

Mr. SPONG. Mr. President, I would like to ask the Senator from Colorado a question or two on my time. If I understand it correctly, the Senator from Colorado has offered his amendment as a complete substitute for the bill reported by the Foreign Relations Committee.

Mr. DOMINICK. The Senator is correct.

Mr. SPONG. And the substitute that he is offering is, with a few minor changes, the Zablocki resolution which passed the House by a voice vote.

Mr. DOMINICK. The Senator is correct. I think the changes are largely minor, although I believe that some are substantive.

Mr. SPONG. Mr. President, I thank the Senator from Colorado.

Mr. President, I hope that the Senate will reject the amendment. On yesterday, by a substantial margin, the Senate rejected an effort to refer the bill to the Judiciary Committee. This morning, by a very substantial margin, the Senate declined to have this subject matter referred to a Presidential commission for a study period of 1 year.

I think that the Senate itself would be derelict in its responsibility and in its regard for the work thus far done over the period of 2 years were it to, at this point and at this time in the debate, adopt a House resolution that is a substitute for its own work.

Regardless of what the Senate may do with the legislation or what the House may do with legislation of this type in the future, and regardless of how the conference may act, the Senate has its own responsibility to shape up to the legislation that it believes fulfills the prerogative of Congress under the Constitution.

I want to say that I think that as far as it goes, the Zablocki resolution is good legislation. I think it would be desirable as a substitute for the present situation that we have, if we can do no more. But I think that we have a responsibility to the American people and that Senators have a responsibility to the Senate as a body to endeavor to do more and to see that our prerogatives under the Constitution to participate in decisions involving the initiation of hostilities continue and that there be participation.

The Zablocki resolution, while requiring reporting, which I think is indeed desirable, fails to recognize the power of Congress to declare war, to participate in those decisions which involve U.S. servicemen in hostilities abroad and to conduct no process or no procedure which would enable Congress to carry out its constitutional prerogatives.

Mr. DOMINICK. Mr. President, will the Senator yield?

Mr. SPONG. I am pleased to yield to the Senator from Colorado.

Mr. DOMINICK. Mr. President, I just want to point out that in the very first sentence of the proposed amendment, which is also in the Zablocki resolution, it says that the Congress reaffirms its power under the Constitution to declare war.

Mr. SPONG. I would point out that this debate has established firmly that Congress has only declared war five times in its history. Thus, if we are to interpret "declare war" to mean more than a formal declaration of war, the resolution does not suffice. It does not provide Congress with any means of participating in the warmaking process up to the point where the President as Commander in Chief takes over. It does not provide for participation in the decisionmaking process, which results in the committing of troops to hostilities.

Mr. President, I reserve the remainder of my time. I yield to the Senator from New York such time as he may require.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. Mr. President, I think we are getting into some version of the numbers game. As has been mentioned on a few occasions by my distinguished friend, the Senator from Colorado, 22 distinguished Americans think this measure should not be passed.

I might point out to the Senator that on our vote this morning 23 Senators did not think this bill should be passed. The vote was 56 to 23. Fixty-six Senators thought it should be passed.

This is pretty much the situation which we face in any major historic debate. There is nothing new about this.

I debated Eugene Rostow on this question publicly. It is interesting, though again not a decisive point, to know that on the national television show called "The Advocate," a vote is taken after the debate. It is a mail vote. I had no involvement in it any more than Dean Rostow did.

The results of the vote following my war powers debate with Dean Rostow is interesting. Out of the total number polled, 1,987, or 68.2 percent, sided with me, and 913, or 31.3 percent, sided with Dean Rostow.

These are rank and file American citizens who obviously are very much concerned about their own security incorporated within the security of our country. Again, I say that this is not decisive in any way. There are opponents, but there are more proponents. We cannot expect unanimity.

With the President on the other side, I am surprised that the figures are what they are. I think that is important. The President says that he does not want this. Two-thirds of all the people who voted say they think that he needs it in terms of the security of this country.

Mr. President, the Zablocki resolution is really an effort to incorporate, as mildly as possible, what the President says he desires.

I agree with the Senator from Virginia. He does not do it, though he says he does.

Mr. President, that is all the Zablocki resolution does. We feel that that is not adequate in terms of Congress reasserting its constitutional war powers. The fundamental difference between those who are for this measure and those who are against this measure is that those against it cannot get over the proposition that somehow or other we are seeking to change the Constitution and that we are seeking to take some power away from the President which the Constitution gives him and which we are trying to deprive him of. Mr. President, this could not and is not being done. We can, and do, delineate the powers under the "necessary and proper" clause.

The Senator from Colorado (Mr. DOMINICK) said, and I know he has spent a great deal of time and work preparing himself very well for this debate, and I think I noted his words correctly, "This bill gives to Congress the decisionmaking power." He said, "We are asked to advise and consent."

Mr. President, under the specific provisions of article I, section 8 of the Constitution, we are not at all asked to advise and consent. We are enjoined to make judgments on the question of war which means the lives and property of the people of America and the survival of this country. We are not asked to advise and consent. This is not the appointment of an ambassador, a minister, or a Cabinet officer. We are enjoined to

tion of powers, and with regard to international affairs and the deployment of troops.

We are asked in most cases, if the Constitution is interpreted the way it seems to me it should be interpreted, to advise. We are asked to advise and consent. We are not asked to take the role of a tactical military commander in chief. As a matter of fact, that role is given to the President specifically in the bill.

Consequently, what I have been trying to do in this amendment is to get the judgment input back and forth wherever a decisionmaking process has been put into effect by the President, so that we will have the information coming to us—hopefully, before as well as after—and to enable us to get our input to him, but not to make the decisions. Therefore, I have inserted a sense of Congress in the effective portion of this amendment, under subsection (2), with regard to the appropriate consultation before involving the Armed Forces, and then showing that there are certain instances in which we know he will have to move or might have to move without having to consult Congress first. Then we ask the President to let us know, under those circumstances, what he is doing and how long the action will go on, so that we may have, among other things, some estimate of what the cost might be in terms of lives, first, and in terms of money, second, which we have to authorize and appropriate for the defense requirements of this country.

Frankly, I think that this is a better way to approach the problem. I think so because I have grave doubts as to the constitutionality of the bill we are now considering. Yet, I do not think there is a problem of any kind with the constitutionality of the substitute I have proposed.

Now, I made a brief reference this morning, in support of the amendment of the Senator from Maryland (Mr. BEALL) on the study commission, to the editorial in the Washington Post of yesterday, which I categorize as being pretty sad, on the ground that it does not really say anything other than the fact that they wish we would all shut up.

The article reads in part:

> The administration has made any number of claims about the alleged unconstitutionality and unwisdom of the war powers bill. Suffice it here to note that it has been unable to win audible support for its claims from any senator recognized for expertise in either the constitutional or foreign-policy field.

It goes on:

> Still, the caliber of argument is embarrassing:

Mr. President, I do not know who this embarrasses, the editor of the Washington Post or whether it is supposed to be another one of those intellectual knockdowns on what we are trying to do, and on those of us who oppose this.

But it is worthwhile to say that here is a list of distinguished people who are opposed to the bill and I think it should be noted in the RECORD and by my colleagues that the list includes:

Herbert Brownell, former Attorney General.
Cecil Olmstead, President, American Section, International Law Association.
David F. Maxwell, former ABA President.
Monroe Leigh, former Assistant General Counsel, Department of Defense.
Edward J. Lawler, former President, American Bar Foundation.
Prof. Gordon Baldwin, University of Wisconsin Law School, Madison, Wisconsin.
Prof. John N. Moore, University of Virginia Law School, Charlottesville, Virginia.

Incidentally, he was the only one who testified before the Foreign Relations Committee, so it seems apparent that the rest have not been able to get their words in, so far as I know.

Prof. Carl Christol, University of Southern California Law School, Los Angeles, California.
Herman Phleger, former legal adviser, Department of State.
Bernard G. Segal, former ABA President.
George Ball, former Undersecretary of State.
Prof. Arthur Schlesinger, State University of New York on Long Island.
Prof. Louis Sohn, Harvard Law School, Cambridge, Massachusetts.
Arthur H. Dean, former president, American Society for International Law.
Eberhard P. Deutsch, leading attorney in New Orleans, Louisiana.
Benjamin V. Cohen, distinguished attorney.
Professor Eugene Rostow, Yale Law School.
Professor Myers McDougal, Yale Law School, primary authority on international law.
Dean Rusk, former Secretary of State.
Dr. James McGregor Burns, Pulitzer Prize winner 1971, Woodrow Wilson Professor of Government, Williams College, Massachusetts.
Professor Abram Chayes, Harvard Law School.
Professor Henry Monaghan, Professor of Law, Boston University.

Mr. President, that is a list of some 22 distinguished lawyers and authorities, right off the bat, who are opposed to the bill, who have grave doubts about its constitutionality and even greater doubts about its wisdom in the event it should ever be determined to be constitutional—which I personally doubt.

So it seems to me, with all deference to the Washington Post, that these are eminent authorities who think on the same basis that we have been discussing; namely, that it is unwise and probably unconstitutional. Some people say it would be a total catastrophe.

Let me, for the purposes of the RECORD, in the process of defending my own amendment, quote from a 75-page article written by Eugene V. Rostow for a Law Journal article, which I believe will be published later this year, with respect to this particular bill. He says:

> My thesis here is that the Javits Bill rests on a premise of constitutional law and constitutional history which is in error, and that its passage would be a constitutional disaster, depriving the government of the powers it needs most to safeguard the nation in a dangerous and unstable world. Even if a President were to ignore such a statute, assuming that it passed over his veto, on the ground that it is unconstitutional, the passage of the Bill would create uncertainties, and envenom politics, in ways which would themselves be dangerous, both at home and abroad. It would tend to convert every crisis of foreign policy into a crisis of will, of pride, and of precedence between Congress and the President, making the policy process even more athletic than it is today.
>
> The Javits Bill is a more serious attack on the Constitution, and the security of the nation, than one or another of the Bricker Amendments which were nearly recommended by the Congress in the middle fifties. Those Amendments dealt only with the legal effect of treaties as internal law. They would have required affirmative action by Congress before treaties became operative as the supreme law of the land.
>
> The Javits Bill is more ambitious. . . .

The PRESIDING OFFICER (Mr. PEARSON). The time of the Senator from Colorado has expired.

Mr. DOMINICK. Mr. President, I yield myself 10 additional minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 10 additional minutes.

Mr. DOMINICK. Mr. President, I think this gives some indication of the concern which very distinguished scholars and very distinguished and knowledgeable people in the international relations field have for the act as it now stands. This, however, does not derogate from the very distinguished efforts which have been made by the Senators from New York and Virginia in an effort to assert the right of Congress to have more say so on the question of whether our troops should be deployed which might lead to or imminently lead to hostilities.

I think we need more input. I have been saying so for some 6 years. I know that the distinguished Senator from New York has been saying so and has done a great deal of work on it, too.

My point is, what we need is either a study group—which has already been defeated by the Senate this morning—or something which will indicate the sense of Congress without binding us, until such time as we can get from this distinguished group of scholars their ideas about what kind of law we should put into effect.

I can say, without any fear of being overly critical, that there were not only extensive hearings in the Committee on Foreign Relations but rather extensive debate on the bill. As I pointed out on a prior occasion after the bill came to the floor and after I had pointed out a few of the interpretations that could be made under the bill, the Senator from New York made amendments to the bill itself to take care of at least some of the problems which I had indicated in my initial talk. We still do not have, for example, any indication as to whether, under the bill, we have to have an act of Congress before we can have patrols going through the DMZ in Korea.

Obviously, every time we do that kind of thing, what we are doing is putting our troops in the position of being exposed to an imminent threat of hostilities. Some of them have been killed. We have no peace in Korea—nothing but an armistice. Our troops happen to be there without any specific congressional authorization of any kind. All we have to back up our action there have been authorizations and appropriations over the course of the years. There are other things which I will get to at a later time.

make judgments. That is why we are the representatives of the people. On the other hand, we do not have the decision-making power alone; the President must join us. He touches off the procedure under the bill by telling us he is committing or proposes to commit troops in hostilities or where there is danger of hostilities. Then, our power becomes operative under the bill.

The Zablocki resolution is inadequate to reclaim for Congress the powers under the Constitution in this area.

We have an infinitely more effective way to come abreast of the situation. It is very interesting to read the Zablocki measure, and the way in which the Dominick amendment has sought to revise that resolution. I wish to give one example to the Senate.

Section 3(D) is carried over from the Zablocki resolution. I wish to read the language in the amendment and comment on it because it is so telltale as to the difference between the amendment and our bill. It reads that the President is to give us a report where the President without specific prior authorization by Congress commits U.S. troops to hostilities or to situations where imminent danger of hostilities is indicated, and—

such other information as the President may deem useful to the Congress in the fulfillment of its constitutional responsibilities with respect to committing the Nation to war and to the use of United States armed forces abroad.

It is we who are taking this responsibility under our bill. We are not waiting for a handout from the President. This is not arrogance; it is what the American people—and the Constitution—expect of us. We have had such bitter experiences as we have with undeclared wars in the last 7 or 8 years. We have come up with what we believe to be a formula which appeals to a great number of Senators as a way to get at this highly subtle equation of how to get in a war. We have fixed the time, and we believe it is a reasonable time, in which we believe that an incident or response to an attack, to repel an attack, and so forth, becomes a war. When that happens a President should not be able to proceed without us. That is our responsibility under the Constitution. We know that no President, and I refer to any President, not just this President, apparently likes the present wide open arrangement very much. But hard experience dictates what we have to do; adopt S. 2956.

The Zablocki measure in the other body does not do what needs to be done. It not only falls short of what the situation requires but it does not carry out what should be the purpose of Congress in respect of a methodology by which it can get abreast of this problem.

So this will not do what it seems to me a great majority of the Senate wants to see done and which the great majority of the Senate believes the security of our Nation, the tranquillity of our Nation, and the security of its people so urgently requires.

As the Senator from Virginia said this matter should not now be laid aside in order to adopt a weak and inadequate restatement of what the President claims he is doing now with respect to his relations with Congress in the matter of undeclared war.

For all those reasons I hope the Senate will reject this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SPONG. Mr. President, I yield myself such time as I may need, I only wish to comment on one matter the Senator from New York touched on in his remarks in response to the Senator from Colorado.

I think the record should show that of those the Senator from Colorado said should be heard on legislation of this type, some have testified. For instance, he referred to George Ball. Mr. Ball testified on this bill. He appeared before the committee and we had the opportunity to cross-examine him. Professor Chayes testified in the House on the war powers legislation. Mr. James McGregor Burns testified in the House on war powers legislation. During the course of the House hearings, Senator JAVITS had introduced his first bill. It was sent over there during their hearings. One of the interesting developments was that Professor Bickle, in testifying in the House, said his inclinations were against any effort to codify the war powers. In the year that ensued he studied the matter. Then, he came before the Senate committee and testified in favor of a proposal essentially akin to what Senator JAVITS had intially introduced. I think many of the people who have written or said they disagree with the bill or some feature of the bill have been heard from directly or indirectly.

The argument over who has or has not testified relates more to the debate over referring this matter to the Committee on the Judiciary or placing it in a study commission, than to the pending amendment. Thus, I simply restate what I said before: The Zablocki measure is an improvement on the present situation, but it does not go far enough to assure the participation of Congress in the war declaring and making process.

Mr. President, I yield the floor.

Mr. DOMINICK. Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator from Colorado has 35 minutes.

Mr. DOMINICK. I yield myself 15 minutes.

First of all, I think it is important to note again for the purpose of the RECORD that House Joint Resolution 1, Mr. ZABLOCKI's resolution—which is substantially what I am putting in—was originally passed in the House by a rollcall vote of 288 to 39 in 1970, and it was again passed by the House, under a suspension of the rules, by a voice vote, on August 2, 1971. So when we originally said it was passed by a voice vote, that was technically correct, but I think it is more important to note that, on a previous vote, it was passed by a rollcall vote of 7 to 1, in round figures.

Why am I introducing this type of substitute for the existing bill? First of all, it has been passed by the House. I do not think the pending measure is going to get through the House, and I see a need to take a step forward, as the Senator from Virginia said. This is one way of getting it accomplished.

Second, I think the existing bill—and when I say this I wish the managers of the bill were on the floor, which they will be in a minute—even as amended by the Senator from New York, creates very, very grave problems for our interests and our alliances in the free world.

Let me go over some of the things that I talked about originally when I was talking in general on the bill. On page 9, at line 14, there is the following wording:

Specific statutory authorization is required for the assignment of members of the Armed Forces of the United States to command, coordinate, participate in the movement of, or accompany the regular or irregular military forces of any foreign country or government when such Armed Forces are engaged, or there exists an imminent threat that such forces will become engaged, in hostilities.

I point out that that alone would destroy the capability of NATO and would probably destroy the capability of the North American Defense Command, because it would eliminate our ability to do anything with respect to the Canadian Air Forces and other forces which are a part of NORAD, and it would put in danger the command and deployment of our troops and defenses which we have in Korea under the United Nations Armed Forces.

In reply to that, the Senator from New York introduced—and it was accepted—an amendment which reads as follows:

Nothing in section 3, subsection (4)—

Which I just read—

Of this act shall be construed to require any further specific statutory authorization to permit members of the Armed Forces of the United States to participate jointly with members of the Armed Forces of one or more foreign countries in the headquarters operations of high level military commands which were established prior to the date of enactment of this act and pursuant to the United Nations Charter or any treaty ratified by the United States prior to such date.

In the process of the discussion on this matter, the Senator from New York said:

I want to point out, Mr. President, that this provision is very narrowly drafted. It does not except any use of actual combat forces. It does not except any command arrangements which are included only in contingency plans, and it refers solely to the use of members of the Armed Forces in "headquarters operations of high-level military commands which were established prior to the date of enactment of this Act. . . ."

For the life of me, I cannot understand how this Nation can be involved in mutual security defenses and forces and now have Congress say, "Well, you can be involved in that, but if anything happens so that it triggers it, you cannot act; all you can do is be a part of the command system which would order somebody else's troops to get into it, even though our troops are already stationed there and even though our troops may be considered to be the bulwark of that particular effort."

Under this particular provision, unless we had a specific act of Congress, we

could not go to the aid of Germany, France, Greece, Italy, or any other one of the NATO countries; all we could do would be to participate in the command of the other troops to get into the action.

Under this particular act, we could not do anything in Korea except participate in the command structure, and we could not use any American forces that have been established there as a defense force as a part of the United Nations participation group, unless we had an act of Congress. How long is that going to take.

Under NORAD, which happens to have its headquarters in my State, there is an agreement with the Canadians for the joint mutual defense of the continental United States and Canada, among other things—the North American Defense Command. We could participate in the command structure, but we could not use any of our forces if Canada should be attacked. So we could not implement any agreements that have been made unless we went to Congress and got an act passed.

What would happen in the meanwhile to our allies and our allied forces or anybody else? How credible are our agreements or our mutual defense pacts going to be? Maybe we do not want any. Maybe we should not have had them in the first place. Maybe we should have knocked them out in the first place. Does anyone think we can live alone these days with the possibility of fractional orbiting bombs over our heads, with the certainty that within 30 minutes with the threat of submarines we could be under nuclear attack. Can anyone say we are going to live alone, without allies, simply because we do not want to get involved in nuclear war? That is going far afield.

I think we would hamstring ourselves. I think we would hamstring the freedom of our country and its citizens. In my opinion, we would not be acting in the way we should, even though we want to regain some of the authority which some Members here think they have lost.

That is just one point. It is a massive one. It involves perhaps some of the most important, sensitive areas that we have in the world—Korea, the European Continent, and the North American Continent. What in the world are we going to say to our allies?

Here is another provision, on page 9 of the proposed act, section 3, subsection (4), which again refers to treaties hereafter ratified. It says that any treaty hereafter ratified must be implemented by legislation specifically authorizing the introduction of the Armed Forces of the United States in hostilities or in such situation.

The point of this, I gather, is to change the words "constitutional processes" which are a part of every treaty into a specific definition of what a constitutional process is. So the Senate is going to arrogate unto itself the determination of what a constitutional process is, and it does this by the passage of this law.

What about a joint resolution of Congress? Is that enough? Apparently not. You have got to have an act. You have got to debate it, pass it, put it through both committees, and do all this before any treaty can become effective.

Maybe that is desirable. But meanwhile, where is the credibility of our defense? Where is the credibility of any alliance, if, every time we are going to do this, we are going to have to say, "We think it is a good idea, but we have got to wait for 535 Members of Congress to make up their minds before we can act, even though we have already ratified the treaty"?

I would say if we are going to do this, what we ought to do is put it in the treaty, not in separate legislation. I would say if this is only going to be effective after Congress has passed a law, let us put it in the treaty provisions, rather than leave it to any other committee to determine what the constitutional processes are.

We point out the situation of U.S. citizens in foreign vessels on the high seas, and that we could not take any action there, because it could not be done without prior specific authorization. The Senator from New York changed that, and added an amendment. He also added the provision that the 30-day clause would not apply if the President certifies to Congress in writing that unavoidable military necessity respecting the safety of the Armed Forces of the United States engaged pursuant to one of the other sections that permit them to be engaged requires the continued use of the Armed Forces in bringing about a prompt disengagement from such hostilities.

What do we do in a case like Korea? We have moved in, we do not have authority from Congress ahead of time, but we have moved in and we get involved with the Chinese, who come pouring down after the 30-day period of engagement, and yet the only way that we can continue is if we are going to disengage: not to counterattack, not to try to stop it, but only if we are going to try to disengage.

What kind of a military tactic would that require? After 30 days, we would have to say, "Sorry, gentlemen, we are only shooting, because we want to get out."

Is this going to help us in the European theater, if we should unfortunately get caught up there? Is it going to help us in Korea? Is it going to help us anywhere, for that matter? Or will it simply give incentives to the military forces who might be killing our own men to continue their drive, because they would know that until Congress acted, the only thing the President could do was get out?

I say with deep feeling that this is a terrible position to put a commander in, be he the President of the United States, the general of the forces, or the private carrying a rifle in the snows of Korea.

Mr. President, I ask unanimous consent to have printed in the RECORD an article entitled "Current Foreign Policy: Congress, the President, and the War Powers," which consists of a statement by Secretary of State Rogers made to the Senate Committee on Foreign Relations on May 14, 1971.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CURRENT FOREIGN POLICY: CONGRESS, THE PRESIDENT, AND THE WAR POWERS

I. INTRODUCTION

It is, as always, my privilege to appear before this committee. I am grateful to you, Mr. Chairman [Senator J. W. Fulbright], and to members of the Committee for the opportunity to testify on the serious questions under consideration.

The Committee has helped stimulate an important examination of the war powers of the President and Congress under our Constitution. This administration, of course, fully respects Congress' right to exercise its constitutional rôle in decisions involving the use of military force and in the formulation of our Nation's foreign policy. We realize that under our constitutional system decisions in this vital area should reflect a common perspective among the legislature, the Executive, and the electorate so that each may play its proper rote. We also recognize that this common perspective can only be built through cooperation and consultation between the legislative and executive branches. Generally speaking, the constitutional process so wisely conceived by the Founding Fathers has worked well throughout our history. Any attempt to change it should be approached carefully and should be subjected to long and full consideration of all aspects of the problem.

The issue before us involves the constitutional authority to commit forces to armed combat, and related questions. These questions have been the subject of considerable debate and scholarly attention.[1] Unfortunately, they are often approached polemically, with one side arguing the President's constitutional authority as Commander in Chief and the other side asserting Congress' constitutional power to declare war—the implication being that these powers are somehow incompatible. The contrary is true. The framers of the Constitution intended that there be a proper balance between the roles of the President and Congress in decisions to use force in the conduct of foreign policy.

In discussing these issues with you today, I wish first to review the historical background of the war powers question, beginning with the Constitution itself and tracing the practice of the Nation throughout our history. I would then like to place the war powers issue in the modern context and discuss with you the factors which I see bearing on the issue of the exercise of presidential and congressional powers now and in the foreseeable future. Finally, from this perspective, I will describe what I believe the national interest requires in terms of a proper balance between the President and the Congress.

First, let me stress that cooperation between the executive and legislative branches is the heart of the political process as conceived by the framers of the Constitution. In the absence of such cooperation, no legislation which seeks to define constitutional powers more rigidly can be effective. Conversely, given such cooperation, such legislation is unnecessary. Obviously there is need for—and great value in—congressional participation in the formulation of foreign policy and in decisions regarding the use of force. But at the same time there is a clear need in terms of national survival for preserving the constitutional power of the President to act in emergency situations.

Footnotes at end of article.

II. HISTORICAL BACKGROUND

A. Textual authority and the intention of the framers

Let me turn, then, first to the historical background, beginning with the Constitution. Article I, section 8, of the Constitution grants Congress a number of specific powers relevant to our discussion, including the power "to . . . provide for the common Defence . . .; To declare War . . .; To raise and support Armies . . .; To provide and maintain a Navy; To make Rules for the Government and Regulation of the land and naval Forces. . . ." The Senate, in particular, is given certain foreign relations powers, to advise and consent to treaties and to the appointment of ambassadors and other officials.[2] Congress has the power to make all laws which are necessary and proper for carrying out powers vested by the Constitution in the Federal Government.[3] In addition, Congress has the sole authority to appropriate funds[4]—a vital power in the war powers and foreign relations area.

The powers of the President which are relevant to this inquiry are found in article II. The President is vested with the executive power of the Government, he is named Commander in Chief of the Army and Navy and is required to "take Care that the Laws be faithfully executed."[5] From these powers and the power to make treaties and to appoint and receive ambassadors is derived the President's constitutional authority to conduct the foreign relations of the United States.

The framers of the Constitution were not writing in a historical or political vacuum. Experience during the colonial period and under the Articles of Confederation had shown the need to strengthen the Central Government. The problem was to create a strong Federal system and yet prevent tyranny.[6] Accordingly, the framers established three powerful Federal branches of government and depended upon the independence of each branch and their coequal powers to provide the checks and balances necessary to preserve the democracy.

The division of the war powers between the legislative and executive branches is illustrative of the general constitutional framework of shared powers and checks and balances. By this division, the framers changed prior United States practice under the Articles of Confederation, where the "sole and exclusive right and power of determining on peace and war" had been vested in the Legislature.[7] They wished to take advantage of executive speed, efficiency, secrecy, and relative isolation from "public passions."[8] At the same time, they wished to avoid the dangers to democratic government exemplified by the unchecked British monarch who, as Hamilton noted, had supreme authority not only to command the military and naval forces but also to declare war and to raise and regulate fleets and armies.[9] Mindful of the hardships which war can impose on the citizens of a country and fearful of vesting too much power in any individual, the framers intended that decisions regarding the initiation of hostilities be made not by the President alone nor by the House or Senate alone, but by the entire Congress and the President together.[10] Yet it is also clear that the framers intended to leave the President certain indispensable emergency powers.[11]

The grant to Congress of the power to declare war was debated briefly at the Constitutional Convention, and that well-known debate reveals the essential intention of the framers. The Committee of Detail submitted to the general Convention a draft article which gave the Congress the power "to make war." Pursuant to a motion by Madison and Gerry, this was amended to the power "to declare war." This change in wording was not intended to detract from Congress' role in decisions to engage the country in war. Rather, it was a recognition of the need to preserve in the President an emergency power—as Madison explained it—"to repel sudden attacks," and also to avoid the confusion of "making" war with "conducting" war, which is the prerogative of the President.[12]

The necessity to repel sudden attacks was the case cited by the framers in which the President clearly had power to act immediately on his own authority. That was the one situation, in 1787, in which it was evident that emergency action was required. But I submit that the rationale behind the concept is broader; that is, that in emergency situations the President has power and a responsibility to use the Armed Forces to protect the Nation's security.[13] This conclusion is borne out by subsequent practice and judicial precedents, as I will show later. In fact, much of the debate at the time centered on the need to curb the European monoarch's tradition of precipitating offensive wars and to transfer to the Federal Government the war powers previously exercised by the States; little attention was given to the scope of the President's power to use the Armed Forces for defensive purposes to protect the Nation or its security interests.[14]

The constitutional division of authority in the war powers area, as I see it, parallels the constitutional balance between the Executive and Legislature in other fields. By dividing these powers betwecn the two branches, the Constitution established a system that, except in emergency situations, would function most effectively if decisions to involve the Nation in armed conflict were arrived at jointly by the President and Congress.

B. Selected historical examples

In addition to the textural authority and the framers' intentions regarding the war powers of Congress and the President, we should consider the practical exercise of those powers since the Constitution was adopted. Many scholars have reviewed the historical records,[15] and I do not intend to cover all of this ground again. I think it is important, however, to identify the trend which developed.

From the earliest years of the Republic we find examples of presidential use of the Armed Forces without congressional approval. These were, at first, very limited in character. For example, in 1801 President Jefferson sent on his own authority a squadron of ships to protect American vessels from the Barbary pirates, but he authorized them to take only defensive actions.[16] The scope of presidential initiative expanded during the 19th and early 20th centuries. President Polk sent American forces into the disputed territory near the Rio Grande in January 1846, where they engaged in battle with the Mexicans purely on the presidential authority.[17] In 1900 President McKinley sent 5,000 troops to China without congressional authorization, to protect Americans and help put down the Boxer Rebellion.[18] President Theodore Roosevelt on his own authority dispatched gunboats to the Canal Zone area.[19] Later, President Roosevelt, Taft, Wilson, and Coolidge intervened and temporarily occupied other Latin American and Caribbean countries without prior congressional approval.[20] Nicaragua, for example, was occupied and, in effect, administered by U.S. Marines for nearly 7 years, from 1926 to 1933. Congressional approval was never requested.[21]

This history shows an increasing exercise by the President of his consttitutional powers to use American armed forces abroad without the prior authorization of the Congress. And yet there was remarkably little complaint from the Congress. It is interesting to speculate why this was so. It seems to me there may have been several possible factors. In the first place, I suppose that Presidents were acting in the context of a generally popular consensus in the country that the United States should assume a posture consistent with its emerging power, particularly in the Western Hemisphere. Second, a large majority of the 19th and early 20th century presidential actions occurred in the Caribbean, where this country's power was so predominant that there was little or no chance of forcible response to our actions. Therefore, the risks to the Nation which article I, section 8, was designed to reduce, never arose. In short, there being no risk of major war one could argue there was no violation of Congress' power to declare war.[22]

It has been suggested that even Franklin Roosevelt's executive agreements in 1940–41 with Britain effecting an exchange of destroyers for bases in the Western Atlantic, and agreements with Denmark and Iceland for bases in Greenland and Iceland, can be considered a legitimate exercise of hemispheric defense.[23] However, the factor distinguishing these agreements from prior presidential actions in the Western Hemisphere was that in 1940–41 there was most unmistakably a great risk that the United States would become involved in a major war.

I cite these historical precedents not because I believe they are dispositive of the constitutional issues your committee is considering—far from it—but to illustrate how the constitutional system adapts itself to historical circumstances. Whatever the reasons for presidential initiatives during this period, they seem to have been responsive to the times and to have reflected the mood of the Nation.

You are, of course, equally familiar with the post-World War II history surrounding the exercise of war powers by the President and the Congress.

At the invitation of the Government of the Republic of Korea and pursuant to resolutions of the United Nations Security Council, President Truman committed over a quarter million air, naval, and land forces to a war in Korea without congressional authorization.

The Truman administration based its authority to commit these troops squarely on the President's constitutional authority. It asserted that "the President, as Commander in Chief of the Armed Forces of the United States, has full control over the use thereof."[24] Citing past instances of presidential use of armed force in the broad interests of American foreign policy, the administration asserted that there was a "traditional power of the President to use the Armed Forces of the United States without consulting Congress."[25] Reliance was also placed on the fact that the action was taken under the United Nations Charter, a part of both the treaty and international law which the President is constitutionally empowered to execute.[26]

President Eisenhower sought congressional authoriaztion of possible engagement of American forces in the Middle East[27] and in the area around Formosa.[28] In his request for a resolution on Formosa he stated his view that:[29]

"Authority for some of the actions which might be required would be inherent in the authority of the Commander in Chief. Until Congress can act I would not hesitate, so far as my constitutional powers extend, to take whatever emergency action might be forced upon us in order to protect the rights and security of the United States.

"However, a suitable congressional resolution would clearly and publicly establish the authority of the President as Commander in Chief to employ the Armed Forces of this Nation promptly and effectively for the purposes indicated if in his judgment it became necessary."

Footnotes at end of article.

When President Eisenhower sent 14,000 troops into Lebanon in 1958, he did so without seeking specific congressional approval and without specifically basing his authority on the 1957 Middle East resolution. He said that the troops were sent "to protect American lives—there are about 2,500 Americans in Lebanon—and by their presence to assist the Government of Lebanon to preserve its territorial integrity and political independence." "I have, however," he said, "come to the sober and clear conclusion that the action taken was essential to the welfare of the United States. It was required to support the principles of justice and international law upon which peace and a stable international order depend." [30]

In 1962 President Kenndey ordered the quarantine of Cuba, "acting under and by virtue of the authority conferred upon me by the Constitution and statutes of the United States, in accordance with the aforementioned resolutions of the United States Congress and the Organ of Consultation of the American Republics, and to defend the security of the United States. . . ." [31] The resolution of Congress referred to by the President was passed one month before the Cuban missile crisis and the quarantine proclamation. The Cuban resolution, unlike the other area resolutions, contained no grant of authority to the President; it simply declared that the United States was determined to use any means necessary to prevent Cuba from extending its subversive activities through the hemisphere and from creating or using an externally supported military capacity which would endanger United States security.[32]

In April 1965, President Johnson sent United States Marines into the Dominican Republic without congressional authorization and stated initially that he was exercising the President's power to protect the safety of American citizens.[33] A few days later when the peacekeeping objectives of the action became predominant, he explained his action as an exercise of the President's power to preserve the security of the hemisphere in accordance with the principles enunciated in the OAS Charter.[34] At no time during the Dominican action did the President seek congressional authorization.

When President Johnson began sending American combat troops to South Viet-Nam in 1965, he relied as authority for his action on a combination of his own constitutional authority as Chief Executive and Commander in Chief, the Senate's advice and consent to the SEATO treaty, and the authority granted by the Congress in the Tonkin Gulf resolution.[35]

Looking back, then, over the last 20 years, one can see that Presidents have given varying rationales for executive action and varying interpretations of the necessity of congressional authorization. I think there are two points to be made regarding this period of our history. First, certainly the area resolutions were some evidence of congressional approval. Usually, however, they arose in an atmosphere of crisis or else in a different factual context than that in which they were eventually relied upon. The question is not whether these resolutions are useful to Presidents—of course they are—but instead whether such open-ended delegations are an effective means for Congress to exercise its constitutional authority.

Second, it serves no useful purpose to argue today whether or to what extent past presidential decisions regarding the use of military force have served the national interest. The very concept of that which best serves the national interest of the United States has undergone significant change since the uses of force of the 1950's and 1960's. The Nixon doctrine represents a recognition that protection of our national interest does not require an automatic United States military response to every threat. The aim of the Nixon doctrine is to increase the participation of other nations in individual and collective defense efforts. While reaffirming our treaty commitments and offering a shield against threats from nuclear powers aimed at our allies or other nations vital to our security, we now look to the nation directly threatened to assume the primary responsibility for providing the manpower necessary for its defense. I am sure this new approach will be of great help in achieving balanced executive-legislative participation in decisions regarding the use of military force.

C. Judicial precedents

Let me turn now briefly to an examination of judicial precedents in the war powers area. There are relatively few judicial decisions concerning the relationship between the Congress and the President in the exercise of their respective war powers under the Constitution. The courts have usually regarded the subject as a political question [36] and refused to take jurisdiction. For example, in *Luftig v. McNamara*, the D.C. Court of Appeals upheld the dismissal of a suit by an Army private to enjoin the Secretary of Defense from sending him to Viet-Nam on the ground that the war was unconstitutional. The court stated: [37]

"It is difficult to think of an area less suited for judicial action than that into which Appellant would have us intrude. The fundamental division of authority and power established by the Constitution precludes judges from overseeing the conduct of foreign policy or the use and disposition of military power; these matters are plainly the exclusive province of Congress and the Executive. . . ."

Accordingly, to the extent issues regarding the war powers are resolved, their resolution is likely to come, as has been the case in the past, through political interaction of the President, Congress, and the electorate. And, in the final analysis, that is the most appropriate means for the settlement of fundamental constitutional questions of this character.

There are, however, a few court decisions which contain expressions of judicial opinion relevant to the war powers issue. These cases suggest some rough guidelines. First, the decisions indicate that courts recognize and accept the President's authority to employ the Armed Forces in hostilities without express congressional authorization.

For example, in *Durand v. Hollins*,[38] the second circuit held in 1860 that in the absence of congressional authorization, the Executive had broad discretion in determining when to use military force abroad in order to respond quickly to threats against American citizens and their property. In the *Prize cases* [39] during the Civil War, the Supreme Court upheld President Lincoln's Southern blockade despite the absence of a declaration of war or other specific congressional authorization. The Court held that when war is initiated by the other party, the President is not only authorized but obliged to resist force by force and has broad discretion in deciding what measures are demanded by the crisis. The decision was also based on the Court's finding of a general congressional sanction of the war from ancillary legislation and subsequent congressional ratification.

The *Steel Seizure* case, *Youngstown Sheet & Tube Co. v. Sawyer*,[40] in which the Supreme Court held invalid President Truman's seizure of the steel mills during the Korean war, is sometimes cited as indicating the limits of the President's independent constitutional authority. However, it is important to note that the precise issue in that case was not the President's authority to conduct hostilities but the scope of his power over a clearly domestic matter—labor-management relations. Moreover, the Court noted and several Justices based their concurring opinions [41] on the fact that Congress had enacted a number of laws concerning domestic labor disputes and in so doing explicitly withheld the power of seizure from the President.

This aspect of the *Steel Seizure* case leads to a second observation: that throughout our history a head-on collision between legislation and Presidential action has rarely, if ever, occurred in the field of foreign policy.[42] This is a testament to the strength and flexibility of our system and to the statesmanship of the Nation's leaders.

There are few judicial pronouncements on what would happen in the event of a clear collision in the area of the war powers. In *Ex parte Milligan*,[43] the concurring opinion of four Justices indicated there were limits to what Congress might do by legislation:[44]

"Congress has the power not only to raise and support and govern armies but to declare war. It has, therefore, the power to provide by law for carrying on war. This power necessarily extends to all legislation essential to the prosecution of war with vigor and success, except such as interferes with the command of the forces and the conduct of campaigns. That power and duty belong to the President as commander-in-chief."

But perhaps Mr. Justice Jackson stated the wisest rule when he said that in the event of a clear collision between legislation and presidential action, ". . . any actual test of power is likely to depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law." [45]

A third guideline that emerges is that when acts of Congress authorize presidential action, the President's power is at its zenith; it encompasses both the authority delegated to him by Congress and whatever independent constitutional authority he may have with respect to the subject matter. It is in this third situation that we find the much-quoted case of *United States v. Curtiss-Wright Export Corp.*,[46] in which the Supreme Court held that the normal legal restrictions upon congressional delegations of power to the President in domestic affairs do not apply with respect to delegations in external affairs because of the Executive's extensive independent authority in that realm and the desirability of allowing him maximum flexibility in exercising that authority.[47] There are numerous other examples of wide definition of presidential powers when acting under and in accordance with an act of Congress.[48]

III. THE MODERN CONTEXT

As we turn from an examination of history to an analysis of the modern context in which the President and Congress operate, I am impressed by the fundamental changes in the factual setting in which the war powers must be exercised. And indeed, it is this very change in setting which has raised difficult constitutional issues that cannot be answered by reference to history alone.

The primary factors underlying this transformation are rather evident and need only be summarized. They include, first, the emergence of the United States as a world power. Since World War II we have found it necessary to maintain a large standing military capacity which is sufficiently well equipped and mobile to enable the United States to play a major peacekeeping role almost anywhere in the world, and often with little delay. This development has generated a reliance upon the United States by other nations to help protect them—which has been translated into a series of defense treaties—and a sense of responsibility on the part of the country to fulfill our commitments in good faith.

Let me say again, because I think it is important to the issue before us, that this Administration has begun to reverse the trend of expanding U.S. military involvement abroad. The Nixon doctrine means that while

Footnotes at end of article.

The PRESIDING OFFICER. The Senator from Colorado has 5 minutes remaining.

Mr. DOMINICK. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 3 minutes.

Mr. DOMINICK. Mr. President, I am not trying to prolong the debate, but I think the Record needs to be made clear.

In the debate on the pending bill, for which I have proposed a substitute, the Senator from New York says that we cannot by statute change the constitutional authority of the President. I would agree with the Senator. Nevertheless, I would say that the proponents of this measure are trying. But even if it is not a question of constitutional authority, it would strike me that what we want to do legislatively is most unwise. Whenever we have Armed Forces of the United States engaged in hostilities or where they are subject to attack or where they have to defend themselves, the fact of the matter is that under the pending bill, if Congress passes it, they will have to stop and there is nothing they can do about it.

They are told to stop by the Congress of the United States. And they are told to fight by the President of the United States.

We say they must stop not necessarily because of the 30 days, but because we have passed an act. We say, "You can't fight any more. You have to stand there and be shot."

This is not very sound. I do not want my boy—and he has been involved for 2 years in the Army—and I do not want anyone else's son to be in that position. If we are going to engage in hostilities, the least we can do is to give some kind of reassurance instead of these constant attacks on the military. They must have the support and backing of the people. They are asked to put their lives on the line; not the Members of the Senate of the United States.

I think, and I say again with all due deference, that the amendments to this bill by the Senator from New York have not clarified that problem. I do not think it is a sufficient answer to say that they can keep on even though we have passed an act providing the President says that he will disengage. Suppose that he does not want to disengage. Suppose that the only way to get out of the situation and bring about peace is to reinforce the attack. Maybe that is the only way we can go from a military standpoint.

Will Congress take the responsibility for many of these tactical decisions? That is what I have been saying. We cannot make 535 generals out of the Congress.

That is what it does. It totally destroys our responsibility to use our forces as an instrument in determining wherever necessary how we will maintain peace in an uneasy world.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. DOMINICK. I will not take up any more time. I have covered my concern with the bill. I think that we do reaffirm our position and our right to have an input and an output insofar as advice and judgment is concerned and still leave the President of the United States in a position where he is the one who has to make the decision in terms of the national policy and the Armed Forces.

It strikes me that this is a clear indication under the Constitution. I hope that we maintain it.

The PRESIDING OFFICER. The time of the Senator has expired. Who yields time?

Mr. SPONG. Mr. President, I yield back our time.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the amendment of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Carolina (Mr. ERVIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), the Senator from Oklahoma (Mr. HARRIS), the Senator from Montana (Mr. METCALF), and the Senator from Illinois (Mr. STEVENSON) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of a death in the family.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Washington (Mr. JACKSON), the Senator from Alaska (Mr. GRAVEL), the Senator from Illinois (Mr. STEVENSON), the Senator from North Carolina (Mr. JORDAN), and the Senator from Iowa (Mr. HUGHES) would each vote "nay."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) is necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Vermont (Mr. AIKEN) and the Senator from Tennessee (Mr. BAKER) are detained on official business.

The result was announced—yeas 22, nays 56, as follows:

[No. 143 Leg.]

YEAS—22

Allen	Curtis	Hruska
Allott	Dole	McGee
Beall	Dominick	Scott
Bellmon	Fannin	Thurmond
Bennett	Fong	Tower
Brock	Griffin	Young
Buckley	Gurney	
Cotton	Hansen	

NAYS—56

Anderson	Burdick	Case
Bentsen	Byrd, Harry F., Jr.	Chiles
Bible	Byrd, Robert C.	Church
Boggs	Cannon	Cook
Brooke	Cranston	Cooper
	Eagleton	Long
	Eastland	Magnuson
	Ellender	Mathias
	Fulbright	Miller
	Gambrell	Mondale
	Hart	Montoya
	Hartke	Moss
	Hatfield	Nelson
	Hollings	Packwood
	Inouye	Pearson
	Javits	Pell
	Jordan, Idaho	Percy
	Kennedy	Proxmire
		Randolph
		Roth
		Saxbe
		Schweiker
		Smith
		Spong
		Stafford
		Stennis
		Stevens
		Symington
		Taft
		Talmadge
		Tunney
		Weicker
		Williams

NOT VOTING—22

Aiken	Humphrey	Mundt
Baker	Jackson	Muskie
Bayh	Jordan, N.C.	Pastore
Ervin	Mansfield	Ribicoff
Goldwater	McClellan	Sparkman
Gravel	McGovern	Stevenson
Harris	McIntyre	
Hughes	Metcalf	

So Mr. DOMINICK's amendment (No. 1114) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SPONG. Mr. President, I move to lay that motion on the table.

The PRESIDING OFFICER (Mr. TAFT). The question is on the motion to lay on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1113

Mr. DOMINICK. Mr. President, I call up my amendment No. 1113.

The PRESIDING OFFICER. The clerk will read the amendment.

The assistant legislative clerk read the amendment, as follows:

On page 13, at the end of section 9 of the bill, add the following: "And nothing in this Act shall be constructed to limit the authority of the President to carry out intelligence activities determined by him to be necessary to the interests of the United States.".

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

Mr. President, the word "constructed" on line 2 of the amendment should be "construed," and I ask consent that it be modified to that extent.

The PRESIDING OFFICER. The amendment is so modified.

Mr. DOMINICK. Mr. President, I do not know whether the distinguished managers of the bill are willing to accept this kind of amendment or not. It certainly is innocuous, and apparent fits in with what they thought was already included; but it most certainly does not appear to be included in many interpretations of the bill.

Before I take a lot of time to say why this amendment is needed, I wonder if the Senator from Virginia or the Senator from New York might give me some reaction to this amendment.

If they decide not to accept it, I can, of course, call for a rollcall vote. I am not sure that it would improve anything, but, for the sake of the RECORD, it would be worth it. I would hope that they would accept it and show once again that this was part of what was intended within the wording of the bill.

The PRESIDING OFFICER. The Chair will inquire whether the amendment the Senator has called up is one of the amendments pursuant to the agreement.

The use or the threat of force is an extremely important part of the implementation of foreign policy. Because of—rather than despite—this, it was left to develop within a political rather than a narrowly constitutional framework. Instead of attempting to tie the hands of either the President or Congress, the authors of the Constitution created a relationship of shared rather than divided powers. It was a relationship neither fixed nor exact which the interplay of political forces, practical necessity, and dynamic leadership in Congress as well as the White House has permitted to develop and shift back and forth over the years. It has allowed a flexibility and resilience in foreign affairs that otherwise would have been impossible. And it has resulted in a historical pattern that has, generally speaking, been one of cooperation between Congress and the President rather than of rivalry and opposition, as the proposed war powers bill would imply.

The sprit of cooperation between Congress and the President is the only feasible way of conducting foreign relations. This is especially so in the important area of the use or threat of force. In a practical sense, neither Chief Executive nor Congress can make extensive use of force without the support or consent of the other. They both rely heavily on each other for the effective use of this ultimate national power. Neither can exercise it alone, and both have the capability of crippling undesired utilization. Congress especially, as we know, can withhold the means of executive action: by refusing to provide funds, men, and equipment; by specifically ending Presidential authority to employ the Armed Forces in particular places and at certain times; and by developing and publicizing the important facts about any aspect of Presidential military activity.

The important point here is that the broad, normal forms of congressional authority are sufficient to halt or prevent Presidential actions that Congress opposes. Properly focused and exercised, these congressional powers may be much more effective in blocking careless or unwise Executive military initiatives than any precise statutory limitations—which in themselves may be unconstitutional—that we may enact at this time. Any such legislation will either be too broad and sweeping to take into account the many specific contingencies that may arise; or else it will be so specific and detailed that it ties the President's hands unnecessarily, crippling his powers in an emergency and, as I suggest, raising basic constitutional questions too important to be decided in the heat and emotion of floor debate.

The constitutional questions are basic. The war powers bill attempts to legislate what the authors of the Constitution specifically avoided including in that document: Precise, rigid restrictions on the President's war powers. It seeks to delimit and divide between President and Congress what the Constitution establishes as shared, cooperative powers. It seeks, furthermore, in effect to amend the Constitution, restricting to 30 days—where in the world does that figure come from?—the President's clear, unlimited power and responsibility to use force to repel attacks so long as he thinks necessary.

If the President has authority to act in the specific fields that S. 2956 will allow him to act in, then by what stretch of the imagination can his powers to act be limited to 30 days?

If the doubtful constitutionality of this legislation is not enough to underline the undesirability of the bill, one may also seriously question its wisdom. Not only does it tie the President's hands in unforeseen emergency situations, but it also seriously affects his ability to meet our present needs. It badly cripples his freedom to deploy our military forces in support of a national expression of will and determination—such as in another Middle East crisis, Berlin blockade, or Cuban missile situation. It affects our participation in NATO and weakens the credibility of our deterrent power. In so doing, incidentally, it encourages the development of just those types of situations which might conceivably lead to hasty military actions—by our potential enemies as well as by ourselves.

What, then, should be done about the war powers bill? For all of the reasons I have just listed, it is clear to me that its passage would be wrong, either as an honest effort to correct what may appear to some as an imbalance between Congress and the President, or as a means for expressing congressional sentiments about Presidential actions. I would suggest, instead, that we turn to a much more modest proposal. By this I refer to the Dominick amendment which would reassert congressional war powers while at the same time recognizing that the President, too, has important powers in this area, and that both Congress and the President must work together to ensure the proper implementation and coordination of the Government's war powers as a whole for the greater good of the Nation.

The Dominick amendment emphasizes the President's responsibility to consult with Congress before and after involving U.S. military forces in combat, committing them to the territories of foreign nations, or making major increases in their size after such commitment. It calls for specific reports on the circumstances, authority for, and scope of such action. Above all, it avoids any implication that it seeks to alter the existing constitutional authority of either Congress or the President.

It is a far better means of expressing the sentiments that many of my colleagues are hoping to voice through the proposed war powers bill. And it puts them in a context far more sensible and responsive to their needs. It is a more meaningful and responsible approach.

Mr. President, I urge support of the pending amendment.

Mr. DOMINICK. Mr. President, I yield myself 1 minute to express my thanks to the distinguished Senator from Alabama (Mr. ALLEN) for bringing up an extremely important point, points which he and I discussed on the floor before and which are in support of my substitute and in opposition to the bill. I will be pinpointing these later. However, I want to express my appreciation to the Senator from Alabama.

Mr. ALLEN. Mr. President, I thank the Senator.

Mr. SPONG. Mr. President, I yield myself 3 minutes.

The PRESIDING OFFICER. The Senator from Virginia is recognized for 3 minutes.

Mr. SPONG. Mr. President, the Senator from Alabama has consistently from the early moments of consideration of this bill made contributions to the debate. He has propounded certain questions and made certain comments, almost since the debate began, which were very helpful in making a record.

I differ with him however on one point in the remarks he just made. The Senator from Alabama on at least three occasions referred to this as an emotional debate. I do not think it has been a very emotional debate. It has been rather dull at times. It has certainly been repetitive.

I think that this measure and the amendments have been considered in a rather calm manner, and that those who have been working on this legislation for a long time have tried to present their views detached from any emotionalism. Furthermore, they have succeeded. The Senator from Alabama whenever he has expressed his thoughts on the floor, has contributed to that atmosphere. But I could not let his remarks go by without saying that we have been going at this matter for two weeks now, and if this is an emotional debate, then I have been somewhere else.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. SPONG. Mr. President, I yield 2 minutes to the Senator from Alabama to reply.

Mr. ALLEN. The emotionalism arises not so much from the emotion displayed by the phlegmatic Senators, as the distinguished Senator from Virginia has pointed out. It refers to the emotionalism arising from the Vietnam war and the fact that it is designed, supposedly, to prevent the occurrence of another Vietnam.

I think it does not reach the Vietnam situation. Obviously it does not apply to Vietnam. However, I think it would allow the emotionalism regarding the Vietnam conflict. That is where the emotionalism comes in rather than in the demeanor of the Senators.

The emotionalism arises from the Vietnam conflict and the desire to see, I assume, that that situation does not occur again.

Mr. SPONG. Then the Senator's reference is to an emotional debate beyond the confines of this Chamber.

Mr. ALLEN. Yes. There does not seem to be too much emotion over this measure from the standpoint of the advocates certainly, as well as the opponents.

Mr. SPONG. Mr. President, I thank the Senator.

Mr. President, unless the Senator from New York has some further comments to make, I am prepared to yield back the remainder of my time, if the Senator from Colorado is prepared to yield back the remainder of his time.

Mr. DOMINICK. Mr. President, how much time do I have remaining?

Mr. DOMINICK. Yes; it is No. 1113. There is a half hour a side. I yielded myself 5 minutes, which I have used, so I will take my seat.

Mr. JAVITS. Mr. President, I wish to enlighten the Senator as to the attitude of the managers of the bill on amendments No. 1113, 1110, and 1112.

Will the Senator yield me 5 minutes for that purpose?

Mr. SPONG. Mr. President, I yield 5 minutes to the Senator from New York.

Mr. JAVITS. These amendments are all designed to do the same thing. They are designed to state something which the act shall not be considered to inhibit. They are not positive; they are negative—to rebut some alleged presumption which arises out of the act.

I call to the attention of the Senator from Colorado that we dealt precisely with this sort of question yesterday, when the Senator from Arkansas (Mr. FULBRIGHT) offered an amendment which, if anything, was far more innocuous. We opposed that amendment because we knew these amendments were going to be offered, and we used these amendments in our opposition, and we said when one tries to negate something that the act may mean, he introduces problems both of surplusage and counterintention, counterpurpose, which we simply cannot accept.

The instance amendment reads:

> Nothing in this Act shall be construed to limit the authority of the President to carry out intelligence activities determined by him to be necessary . . .

Mr. President, intelligence activities could be an expeditionary force to Cuba or East Germany. Intelligence activities could be anything that the President says they shall be.

There is nothing in the bill that inhibits intelligence activities per se, except when, under the cover of intelligence activities, we are committing our forces to the imminent danger of hostilities or to hostilities.

I could get up and say there is no limitation whatever on intelligence activities because intelligence activities do not include any hostilities or the imminent threat of hostilities, but that would be neither here nor there as far as the Senator from Colorado was concerned, and perhaps other Senators who have his point of view.

There is no inhibition in the bill respecting intelligence operations per se. There is no inhibition respecting the constitutional authority of the President under the North Atlantic Treaty. We have adopted a perfecting amendment, adopting command arrangements, et cetera—that is under No. 1110. Under No. 1112, there is the show of force argument. Yes, if a show of force is going to put us in war, we want to be in on it; and if it does not, the President is free to go ahead.

We have the same problem before us as we had in Senator FULBRIGHT's amendment. We must in all conscience oppose them.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I yield myself 5 minutes.

I am somewhat distressed that the Senator from New York has apparently taken the position that he is not going to accept even reasonable amendments, apparently doing it on the basis that we do not need such amendments because the bill is clear on each of these points. However, I disagree.

Therefore, I call for the yeas and nays on this amendment.

The yeas and nays were ordered.

Mr. DOMINICK. Mr. President, the Senator from New York may think that intelligence activities do not involve sending troops into areas where there is an imminent threat of hostility. I do not think he remembers history very well. What happened to the *Pueblo*? I would say the crew of the *Pueblo* thought they were in hostilities, whether they were on board the ship, when they got taken over, or whether they were in the Korean jail. I would say that the crew members of the EC–121, which was shot down and destroyed and the men killed, also thought they were rather sharply under attack.

There is nothing in this bill which says anywhere, as far as I can see, that we can conduct any kind of activity of that kind without prior specific authorization from Congress; and if you get prior specific authorization from Congress, then you do not have an intelligence activity. What we are doing is something which is designed to find out whether or not a potential enemy is going to do harm to us or our allies, and for the life of me I cannot understand why the manager of this bill would not accept an amendment which says that the President can go forward with intelligence activities even though he does not have prior authorization from Congress, and such activity would be in the best interests of the United States.

We can say, if we want to, that a whole expeditionary force is an intelligence activity, but my recollection of history does not bear out such an assertion. Intelligence activities that we know of, that have been talked about openly, include the U–2 over the Soviet Union, which was shot down. Was that an illegal act that the President conducted? Possibly it could be under this bill, it would seem to me.

What would happen in the case, as I say, of the EC–121 and the *Pueblo*, and their crews? What happens to other people who are deployed in intelligence activities which do not involve a large number of men and a large amount of materiel, but do involve, obviously, sending people who may be in the defense forces or the Armed Forces into very dangerous areas? The degree of the danger has already been shown. Hopefully we will not be doing very much of that but, that is not to say that we are necessarily wise in ruling it out.

Surely, we have a satellite capability, as I am sure we will be told, which can get information for us by a variety of other methods. But we can also be blinded, as has been said publicly on this floor and in the newspapers, by the anti-satellites which have already been developed and tested by the Soviet Union, in which case we would not have anything unless we went back to one of the methods which have created problems for us before.

Why not put a simple thing in to say that the President is permitted to use the Armed Forces for the purpose of gathering intelligence? What in the world is the matter with that?

I yield back the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. SPONG. Mr. President, I yield myself 1 minute.

I join the Senator from New York in asking that this amendment be defeated. As the Senator from New York pointed out yesterday, the floor manager opposed an amendment of the same nature offered by the Senator from Arkansas, which said nothing should be construed to give the President of the United States more power than he had under the Constitution.

There is nothing in this bill preventing intelligence activity. The judgment and decision of the President will come into play if intelligence activities lead to hostilities in which the Armed Forces need to be employed. Then the bill comes into play. But nothing in this measure prohibits intelligence activity.

Mr. DOMINICK. Mr. President, will the Senator yield to me, since I have yielded back my time?

Mr. SPONG. I am happy to yield.

Mr. DOMINICK. Why does the Senator say what he just said? The bill before us says that only under certain circumstances could the President put certain forces in. If we say this is not an imminent threat of hostilities, he is not entitled to do it; and if it is an imminent threat of hostilities, he can only do it for 30 days.

Mr. SPONG. What I said was that there is nothing in the bill to prevent intelligence activities. That is all. If something happens—and the Senator brought up the *Pueblo;* I think that is an unhappy chapter in our history, but I may as well use it as an example—there is nothing in this bill that would prevent the continued use of that type of activity. It is hostilities and not the intelligence activity that concerns us.

Thus, if that ship is attacked, the President makes a judgment as to what he wishes to do. If he wishes to respond with force, he does so and reports under this bill as the Zablocki bill we have just talked about would have required him to do. But under this bill there is a 30-day provision which would become operative and which would encourage the President to weigh carefully his actions.

Mr. DOMINICK. Will the Senator yield for a further question?

Mr. SPONG. I am pleased to yield.

Mr. DOMINICK. This is what I do not understand: There is a specific provision in the act which says you cannot use the Armed Forces of the United States without prior authorization from Congress except in limited circumstances. Is the Senator saying that intelligence activities do not come within those circumstances, do I gather?

Mr. SPONG. I said that twice.

Mr. DOMINICK. If you say that, you have to have prior authorization from Congress; do you not?

Mr. SPONG. No, I did not say that. I said, first, intelligence activities do not come within the purview of the bill. I said, second, if the intelligence activities result in an attack upon those conducting them, then the President has the authority to respond as he sees fit. He is, however, required to report to Congress. That is all. Then there is a 30-day period, and Congress then positively condones or authorizes what the President has done, or they say that continued response, which might lead into a wider war, is not necessary.

In the case of the *Pueblo*, which was the Senator's example, there is nothing in this legislation to prevent such activities as were being conducted. In the event of a repeated incident of that type, the President would make a judgment as to how to respond. The President is not restricted. But, he comes under the language of this bill, because there is an emergency, there is an attack upon American forces. Therefore, the bill comes into play, and the President must report to Congress.

I do not wish to be repetitive. We have tried to make that point on this floor for 5 or 6 days, but I repeat it again.

Mr. DOMINICK. Well, let me just ask—will the Senator yield for one further question?

Mr. SPONG. I am pleased to yield.

Mr. DOMINICK. The bill says, under section 3:

> In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be introduced in hostilities . . .

Only under certain circumstances. What I am saying is, we are using members of the Armed Forces in intelligence activities.

Mr. SPONG. That is right.

Mr. DOMINICK. Well, now, as I understand the bill, as I read it—and maybe I am wrong—in sections 2 and 3 it says that he cannot introduce them in situations where there is an imminent danger of hostilities unless he has consent from Congress.

Mr. SPONG. The Senator from Colorado is a victim of a strained interpretation. It is very clear what it says. It says:

> In the absence of a declaration of war by the Congress, the Armed Forces of the United States may be introduced in hostilities, or in situations where imminent involvement in hostilities is clearly indicated by the circumstances, only—

And, the situations are specified. There is nothing to prohibit it. It goes back to a point we previously debated.

Mr. DOMINICK. But the word is "only," and then it is listed. It does not say anything about intelligence activities.

Mr. SPONG. Under this bill, the President can do everything that he is doing presently as Commander in Chief. He cannot introduce troops into hostilities for the purposes of offensive warfare under the Constitution or under this bill without authorization.

Mr. DOMINICK. Will the Senator yield for one more question?

Mr. SPONG. I yield.

Mr. DOMINICK. If we are not doing anything in this bill except for sections 5 and 6, why do we try to outline under section 3 the only places where the President can use Armed Forces? The Senator knows as well as I do, because he is a very distinguished lawyer, that when you start itemizing what you can do, everything that is not itemized is left out, and one of them is the intelligence activities.

Mr. SPONG. We have outlined herein the circumstances, under the Constitution, in which we interpret the President, as Commander in Chief, to have the prerogative to act in emergency situations. This not only is based upon early interpretations of the Constitution which includes Madison's notes on the repelling of an attack, but also is backed up by case law which has subsequently been decided, although that has been sparse.

We have outlined these to make it very clear that the President has these powers. In specifying these powers, it is the position of the sponsors of the bill that we are giving the President no powers that he does not have under the Constitution, nor are we taking any powers away from the President.

Mr. GURNEY. Mr. President, will the Senator yield?

Mr. SPONG. I have no objection to yielding to the Senator except that it is on our time.

Mr. GURNEY. For a question.

Mr. SPONG. I yield.

Mr. GURNEY. It has to do with the *Pueblo* incident, which the Senator from Virginia and the Senator from Florida have been discussing.

Suppose we have this situation. Suppose the *Pueblo*—as it was—was cruising off the North Korean coast; but instead of an abrupt sneak attack, as occurred in the *Pueblo* incident, the Government of North Korea advised the United States openly that if the *Pueblo* continued cruising off the coast of North Korea, North Korea was going to blast it out of the water. What about a case such as that?

Mr. SPONG. We have that information, and then the President has alternative choices.

I will tell the Senator what I would do if I were President. I would call the leadership of Congress and tell them that that was the situation, and I would seek their concurrence in the degree of response I took. I would weigh its effect upon our policy.

Mr. GURNEY. I think the Senator misunderstands my question.

Mr. SPONG. I do not think I misunderstand it.

Mr. GURNEY. I was not talking about a degree of responsibility. I was talking about whether the President would have the authority, under this bill, to continue the intelligence activity, not whether he had to send another fleet or a great many airplanes, but just continued to have the *Pueblo* going up and down the coast.

Mr. SPONG. The President would have the authority to continue the intelligence activity. The reason why the Senator from Virginia mentioned the degree of response was that that is what we who support this legislation are concerned about.

Mr. GURNEY. What does this language mean, then: "or in any situation where imminent involvement in hostilities is clearly indicated by the circumstances?" It seems to me that any reasonable man might assume that "imminent hostilities" might be included in that sort of situation.

Mr. SPONG. As the Senator from Virginia has said to the Senator from Florida, the President has alternatives there. He can respond on his own. But, then he comes under the bill.

Mr. GURNEY. How can he? Under the bill, he is prevented from using the Armed Forces then.

Mr. SPONG. No, he is not. If the Senator says there is an imminent threat, the President has the right, under the bill, to forestall. That is clearly spelled out, and he can move. All he has to do is come back to Congress. What I said to the Senator from Florida, in response to his question, was that the President has alternatives. He can move, under this bill. He can forestall. He clearly has that right. And he comes to us later or, as I suggested, which I wish had been done in several instances, he can consult; because under the circumstances given by the Senator from Florida, the hostilities had not begun.

Mr. GURNEY. That is true.

Mr. SPONG. And there is time for consultation. We all agree that there has been too little consultation.

But, to answer the Senator from Florida: First, intelligence activities would not be impeded; second, the judgment as to the response would be up to the President of the United States, who, under this bill, is not precluded from responding, but has the authority to do so if the threat is imminent.

Mr. GURNEY. I would not quarrel with the Senator's analysis of what the bill could or could not permit the President to do. But I would make this observation: As I see it, the President would, indeed, have the authority, under the bill, to continue the patrolling of the *Pueblo* for another 30 days.

Mr. SPONG. In that instance, that is correct.

Mr. GURNEY. Then he would have to come back to Congress and say, "May I continue it further?"

That is the most ridiculous situation I have ever heard of. Every time the President is going to be faced, on the high seas or somewhere else, with intelligence activities by another nation, he is going to have to come back and ask the Committee on Foreign Relations or someone else, "May I continue to do this act?" I think this is what Senator DOMINICK was getting at—that it places the President in a ridiculous situation.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. SPONG. I yield.

Mr. JAVITS. I do not think the Senator's analysis is correct.

Mr. GURNEY. I was using the Senator's analysis, not mine.

Mr. JAVITS. The Senator was not using the analysis of the Senator from Virginia.

Mr. GURNEY. This Senator says that he was using the analysis of the Senator from Virginia.

Mr. JAVITS. I am not quarreling with the Senator.

Mr. GURNEY. The Senator sounds as though he is.

Mr. JAVITS. The Senator has said that his example was that the *Pueblo* was cruising near North Korea, in international waters, and that the North Koreans said they would blow us out of the water. Is that not what the Senator said?

Mr. GURNEY. That is correct.

Mr. JAVITS. If the North Koreans said they would blow us out of the water, then there is an imminent threat of attack on our forces, and the President can respond to such an attack or threat of an attack by the North Koreans. He can forestall it by sending aircraft over North Korea or anything——

Mr. GURNEY. The Senator does not understand what I was talking about, because that is not what I was talking about.

Mr. JAVITS. Will the Senator allow me to finish?

Mr. GURNEY. Why can we not get our facts straight?

Mr. JAVITS. If the Senator will allow me to finish, I will allow the Senator to finish.

As I understand the Senator's question, the President could have the right to forestall that attack in any way he deemed advisable, including letting the vessel continue to cruise. That is his judgment. But if, at the end of 30 days, Congress does not back him, and he has certified to Congress that he had this threat, it is not just a question of the cruising of the ship. There is imminent danger of hostilities, and then Congress has a right to say, "No, we do not want to get into war over this one." That is what the bill says.

Mr. GURNEY. That is exactly what I thought it said.

My point is that if if I were an enemy, reading this kind of language, I would make sure you had all kinds of incidents such as that, and then the President and Congress will be conferring regularly, year after year, at the end of 30 days, on whether we will send a submarine here or a ship there or an airplane somewhere else. That is how ridiculous this language it.

I thank the Senator for his time.

Mr. SPONG. Mr. President, how much time do the opponents have remaining?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. SPONG. I understand that the Senator from Colorado has yielded back the remainder of his time.

The PRESIDING OFFICER. The Senator from Colorado has done so.

Mr. SPONG. I yield back the remainder of our time.

The PRESIDING OFFICER. All time on the amendment has been yielded back.

The question is on agreeing to the amendment of the Senator from Colorado. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from North Carolina (Mr. ERVIN), the Senator from Alaska (Mr. GRAVEL), the Senator from Oklahoma (Mr. HARRIS), the Senator from Iowa (Mr. HUGHES), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Washington (Mr. JACKSON), the Senator from North Carolina (Mr. JORDAN), the Senator from Montana (Mr. MANSFIELD), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from South Dakota (Mr. MCGOVERN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Montana (Mr. METCALF), the Senator from Maine (Mr. MUSKIE), the Senator from Rhode Island (Mr. PASTORE), the Senator from Alabama (Mr. SPARKMAN), and the Senator from New Jersey (Mr. WILLIAMS) are necessarily absent.

I further announce that the Senator from Connecticut (Mr. RIBICOFF) is absent because of death in the family.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Iowa (Mr. HUGHES), and the Senator from Alaska (Mr. GRAVEL) would each vote "nay."

On this vote, the Senator from North Carolina (Mr. JORDAN) is paired with the Senator from Washington (Mr. JACKSON). If present and voting, the Senator from North Carolina would vote "nay" and the Senator from Washington would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Arizona (Mr. GOLDWATER) and the Senator from Utah (Mr. BENNETT) are necessarily absent.

The Senator from South Dakota (Mr. MUNDT) is absent because of illness.

The Senator from Vermont (Mr. AIKEN) is detained on official business.

If present and voting, the Senator from Utah (Mr. BENNETT) would vote "yea."

The result was announced—yeas 29, nays 49, as follows:

[No. 144 Leg.]

YEAS—29

Allen	Dominick	Miller
Allott	Fannin	Saxbe
Baker	Fong	Scott
Beall	Griffin	Smith
Bellmon	Gurney	Stevens
Brock	Hansen	Taft
Buckley	Hruska	Thurmond
Cotton	Jordan, Idaho	Tower
Curtis	Long	Young
Dole	McGee	

NAYS—49

Anderson	Eastland	Packwood
Bentsen	Ellender	Pearson
Bible	Fulbright	Pell
Boggs	Gambrell	Percy
Brooke	Hart	Proxmire
Burdick	Hartke	Randolph
Byrd, Harry F., Jr.	Hatfield	Roth
	Hollings	Schweiker
Byrd, Robert C.	Inouye	Spong
Cannon	Javits	Stafford
Case	Kennedy	Stennis
Chiles	Magnuson	Stevenson
Church	Mathias	Symington
Cook	Mondale	Talmadge
Cooper	Montoya	Tunney
Cranston	Moss	Weicker
Eagleton	Nelson	

NOT VOTING—22

Aiken	Humphrey	Mundt
Bayh	Jackson	Muskie
Bennett	Jordan, N.C.	Pastore
Ervin	Mansfield	Ribicoff
Goldwater	McClellan	Sparkman
Gravel	McGovern	Williams
Harris	McIntyre	
Hughes	Metcalf	

So Mr. DOMINICK's amendment (No. 1113) was rejected.

Mr. JAVITS. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. SPONG. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. FULBRIGHT. Mr. President, I yield to the distinguished Senators from West Virginia.

ORDER OF BUSINESS

Mr. ROBERT C. BYRD. Mr. President, for the information of Senators, it is anticipated that there will be four more votes today. The pending amendment by the Senator from Arkansas (Mr. FULBRIGHT) has a time limitation of 2 hours. However, it is not expected that the full time will be utilized. Upon the disposition of that amendment, the Senator from Colorado (Mr. DOMINICK) has 3 amendments which will be taken up in succession, 1 hour on each amendment. Again it is the hope that the full time will not be consumed.

Senators are alerted, therefore, to the fact that there will be four more rollcall votes today, and that it will be a reasonably late session.

FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972

Mr. RANDOLPH. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on S. 2770.

The PRESIDING OFFICER (Mr. BENTSEN) laid before the Senate the amendment of the House of Representatives to the bill (S. 2770) to amend the Federal Water Pollution Control Act, which was to strike out all after the enacting clause, and insert:

That this Act may be cited as the "Federal Water Pollution Control Act Amendments of 1972".

SEC. 2. The Federal Water Pollution Control Act is amended to read as follows:

"TITLE I—RESEARCH AND RELATED PROGRAMS

"DECLARATION OF GOALS AND POLICY

"SEC. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

"(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

"(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by 1981;

"(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

"(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

"(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

"(6) it is the national policy that a major

research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

"(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent and abate pollution, to play the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act. It is further the policy of the Congress to support and aid research relating to the prevention and abatement of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention and abatement of pollution.

"(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, control, and abatement of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

"(d) Except as otherwise expressly provided in this Act, the Administrator of the Environmental Protection Agency (hereinafter in this Act called 'Administrator') shall administer this Act.

"(e) Public participation in the development, revision, and enforcement of any regulation, standard, or effluent limitation established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

"(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and inter-agency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

"(g) In the implementation of this Act, agencies responsible therefor shall consider all potential impacts relating to the water, land, and air to insure that other significant environmental degradation and damage to the health and welfare of man does not result.

"COMPREHENSIVE PROGRAMS FOR WATER POLLUTION CONTROL

"SEC. 102. (a) The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for abating or reducing the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial, and other legitimate uses. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

"(b)(1) In the survey or planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow for the purpose of water quality control, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

"(2) The need for and the value of storage for this purpose shall be determined by these agencies, with the advice of the Administrator, and his views on these matters shall be set forth in any report or presentation to the Congress proposing authorization or construction of any reservoir including such storage.

"(3) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of water quality control in a manner which will insure that all project purposes share equitably in the benefits of multiple-purpose construction.

"(4) Costs of water quality control features incorporated in any Federal reservoir or other impoundment under the provisions of this Act shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

"(5) No license granted by the Federal Power Commission for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

"(c)(1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control and abatement plan for a basin or portion thereof.

"(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control and abatement plan for the basin or portion thereof which—

"(A) is consistent with any applicable water quality standards, effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

"(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

"(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

"(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council any areawide waste management plans developed pursuant to section 208 of this Act, and any State plan developed pursuant to section 303(e) of this Act.

"(3) For the purposes of this subsection the term 'basin' includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof, as well as the lands drained thereby.

"INTERSTATE COOPERATION AND UNIFORM LAWS

"SEC. 103. (a) The Administrator shall encourage cooperative activities by the States for the prevention and abatement of pollution, encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and abatement of pollution; and encourage compacts between States for the prevention and control of pollution.

"(b) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements and compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by the Congress.

"RESEARCH, INVESTIGATIONS, TRAINING, AND INFORMATION

"SEC. 104. (a) The Administrator shall establish national programs for the prevention and abatement of pollution and as part of such programs shall—

"(1) in cooperation with other Federal, State, and local agencies, conduct, and promote the coordination and acceleration of, research, investigations, experiments, training, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and abatement of pollution;

"(2) encourage, cooperate with, and render technical services to pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals, including the general public, in the conduct of activities referred to in paragraph (1) of this subsection;

"(3) conduct, in cooperation with State water pollution control agencies and other interested agencies, organizations and persons, public investigations concerning the pollution of any navigable waters, and report on the results of such investigations;

"(4) establish advisory committees composed of recognized experts in various aspects of pollution and representatives of the public to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research;

"(5) in cooperation with the States, and their political subdivisions, and other Federal agencies establish, equip, and maintain a water quality surveillance system for the purpose of monitoring the quality of the navigable waters and ground waters and the contiguous zone and the oceans and the Administrator shall, to the extent practicable, conduct such surveillance by utilizing the resources of the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, and the Coast Guard, and shall report on such quality in the report required under subsection (a) of section 516; and

"(6) initiate, and promote the coordination and acceleration of research designed to develop the most effective practicable tools and techniques for measuring the social and economic costs and benefits of activities which are subject to regulation under this Act; and shall transmit a report on the re-

Ryan	Steele	Ware
St Germain	Steiger, Wis.	Whalen
Sandman	Stephens	Whalley
Satterfield	Stokes	White
Saylor	Stratton	Whitehurst
Scherle	Stuckey	Whitten
Schmitz	Sullivan	Widnall
Schneebeli	Symington	Wiggins
Schwengel	Talcott	Williams
Scott	Taylor	Wilson, Bob
Sebelius	Teague, Calif.	Wilson,
Selberling	Teague, Tex.	Charles H.
Shipley	Terry	Winn
Shoup	Thompson, Ga.	Wolff
Shriver	Thompson, N.J.	Wright
Sikes	Thomson, Wis.	Wyatt
Skubitz	Thone	Wydler
Smith, Calif.	Tiernan	Wylie
Smith, Iowa	Udall	Wyman
Snyder	Ullman	Yates
Spence	Van Deerlin	Yatron
Springer	Vander Jagt	Young, Fla.
Stanton,	Vanik	Zablocki
J. William	Veysey	Zion
Stanton,	Vigorito	Zwach
James V.	Waldie	
Steed	Wampler	

NAYS—4

Dellums	Riegle
Rangel	Scheuer

ANSWERED "PRESENT"—1

Harrington

NOT VOTING—62

Abourezk	Esch	Obey
Ashley	Eshleman	Passman
Aspinall	Evins, Tenn.	Patman
Badillo	Frelinghuysen	Pettis
Blaggi	Gallfianakis	Preyer, N.C.
Bingham	Gallagher	Pryor, Ark.
Blanton	Goldwater	Rarick
Boggs	Hansen, Wash.	Rodino
Bow	Hébert	Roncallo
Brooks	Henderson	Rostenkowski
Caffery	Hosmer	Roush
Chisholm	Jones, Tenn.	Sarbanes
Clancy	Kee	Sisk
Clark	Keith	Slack
Clausen,	Kluczynski	Smith, N.Y.
Don H.	Landgrebe	Staggers
Conyers	Landrum	Steiger, Ariz.
de la Garza	Long, La.	Stubblefield
Dennis	Macdonald,	Waggonner
Diggs	Mass.	Young, Tex.
Dowdy	Mitchell	
Dwyer	Mollohan	

So the joint resolution was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Bow.
Mr. Rodino with Mr. Hosmer.
Mr. Evins of Tennessee with Mr. Clancy.
Mr. Waggonner with Mr. Esch.
Mr. Stubblefield with Mr. Goldwater.
Mr. Aspinall with Mr. Pettis.
Mr. Ashley with Mr. Landgrebe.
Mr. Blaggi with Mr. Don H. Clausen.
Mr. Boggs with Mr. Smith of New York.
Mr. Passman with Mrs. Dwyer.
Mr. Brooks with Mr. Keith.
Mr. Rostenkowski with Mr. Dennis.
Mr. Sarbanes with Mr. Steiger of Arizona.
Mr. Staggers with Mr. Eshleman.
Mr. Henderson with Mr. Frelinghuysen.
Mr. Jones of Tennessee with Mrs. Hansen of Washington.
Mr. Kluczynski with Mr. Badillo.
Mr. Landrum with Mr. Long of Louisiana.
Mr. Caffery with Mr. Patman.
Mrs. Chisholm with Mr. Gallagher.
Mr. Mollohan with Mr. Mitchell.
Mr. Young of Texas with Mr. Clark.
Mr. Sisk with Mr. Diggs.
Mr. Macdonald of Massachusetts with Mr. Abourezk.
Mr. Slack with Mr. Blanton.
Mr. Conyers with Mr. Kee.
Mr. Bingham with Mr. de la Garza.
Mr. Rarick with Mr. Preyer of North Carolina.
Mr. Roncallo with Mr. Gallfianakis.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FEDERAL ADVISORY COMMITTEE STANDARDS ACT

Mr. MONAGAN. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4383) to authorize the Office of Management and Budget to establish a system governing the creation and operation of advisory committees throughout the Federal Government which are created to advise officers and agencies of the Federal Government.

The SPEAKER. The question is on the motion offered by the gentleman from Connecticut.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 4383, with Mr. STRATTON in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from Connecticut (Mr. MONAGAN) will be recognized for 30 minutes, and the gentleman from Michigan (Mr. BROWN) will be recognized for 30 minutes.

The Chair recognizes the gentleman from Connecticut.

Mr. MONAGAN. Mr. Chairman, I yield myself such time as I may consume.

(Mr. MONAGAN asked and was given permission to revise and extend his remarks.)

Mr. MONAGAN. Mr. Chairman, the purpose of this bill is to make ground rules for the operation of the advisory commissions which extend throughout the executive branch of the Government. In recent years, particularly, there has been a tremendous proliferation of these commissions.

Really they have gotten out of hand. Because of their influence they have been referred to as the "fifth arm of the government." It has been estimated, for example, that there are up to 3,200 of these advisory commissions which are circulating about, out in outer space without any substantial control over them.

It is not only the number of these commissions that is important, but also the number of people who are involved in their activities. It has been estimated that there are up to 20,000 people serving on various of these commissions, and that there is a staff of some 4,400 engaged in their activities.

Not only are many people involved and are there so many commissions, but substantial sums of money are spent in the pursuit of these activities. It has been estimated that between $65 and $75 million a year is expended upon advisory commissions of various types. For example, the National Commission on the Causes and Prevention of Violence spent $1.3 million. The Commission on Obscenity and Pornography spent almost $1.8 million. The recommendations of these commissions were substantially repudiated, and in some cases even before a formal report had been made.

It is the belief of the committee, and it is my belief that there is a tremendous waste of time in the operation of these commissions, because the executive branch members of the Cabinet serve on as many as 43 advisory committees. The committees are too often inefficient and in many instances there are duplications. In some instances, five or six different commissions have been constituted to cover the same subject.

Control of the growth and administration of advisory committees is the type of activity I believe, Mr. Chairman, in which the Committee on Government Operations should be engaged. It relates to the efficient functioning of Government agencies, and it is in the interest of improving the efficiency of operation of the Government that this bill is brought before the House, to perform a housekeeping function that is not being performed at the present time.

Briefly, the bill itself establishes an office in the Office of Management and Budget whose function will be to ride herd on these various advisory commissions.

The bill also provides for the termination of advisory committees. Those advisory committees created by statute after the date of enactment of the bill will terminate upon the expiration of 2 years following their establishment unless termination is otherwise provided for by statute.

All nonstatutory advisory committees, whether created before or after the enactment of the bill will terminate 2 years after the effective date of the bill or 2 years after the date of their establishment, whichever is later unless the creating authority continues them in existence by appropriate action. The effect of this provision will be to require a bi-annual review of an advisory committee's usefulness.

A Committee Management Secretariat, as I say, will be set up. The Director will review the activities of each advisory committee to see whether or not it is achieving its objectives. He will prescribe administrative management and controls.

In addition to that, I think a very important point for the Congress is that the existing committees are requested to look upon their own responsibilities, and it is declared to be the policy of Congress that no new commissions should be set up where an existing committee of the Congress is competent to carry on the studies or the obligations sought to be placed upon a new body.

The President is required to make some sort of report upon the work of the advisory committees and to make an annual report on the activities of advisory committees.

Provision is made that there shall be a central filing place for the reports of advisory committees in the Library of Congress. At the present time there is no provision anywhere for the permanent recording of the often important work of these advisory commissions.

Each agency head is required to maintain general information about the advisory commissions within his jurisdiction.

Finally, the administration of the visory committees is governed.

the most important provision here is the one which requires fair representation of different points of view upon any advisory commission, so that they will not all be educators on committees in the Department of Education and will not all be scientists, physicians, or medical men on commissions relating to the Institutes of Health.

Finally, there is a provision for fair and adequate publicity about the doings and the meetings of these advisory commissions, so that the public will be informed as to when they meet and what the purpose of any meeting will be.

This, in short, Mr. Chairman, is a summary of the legislation that we bring before the House today. It will streamline the operations of the Government insofar as advisory committees are concerned. It will reduce their personnel. It will provide a definite procedure for their creation. More importantly, it should bring substantial savings to the taxpayer not only because of elimination of duplication but also because of reduction of the expenditure of funds that have been going in the past to fund the operations of these committees.

I hope that Members will support this legislation.

Mr. BROWN of Michigan. Mr. Chairman, I yield myself such time as I may consume.

(Mr. BROWN of Michigan asked and was given permission to revise and extend his remarks.)

Mr. BROWN of Michigan. Mr. Chairman, I commend the chairman of the committee, the gentleman from Connecticut, for the fine work he has done in bringing to light the uncontrolled growth of advisory committees in the Federal Government and for pointing up the absence of guidelines under which such committees should operate.

The problem he describes is not new and does not bear any political party's label. It has existed in both Republican and Democratic administrations and requires a bipartisan effort to solve it.

The Office of Management and Budget witnesses testified before our subcommittee and indicated their concurrence in the general objectives of H.R. 4383. However, I would be less than candid if I called it an administration bill. The OMB contends that the objectives of the bill affecting the executive branch could be best attained through administrative regulation and that additional legislation is not needed. Indications are, however, that there is no alternative to the legislation.

It has now been over 2 years since the Assistant Director of OMB, Mr. Dwight Ink, promised the subcommittee an early release of a directive implementing a revised plan to improve Federal committee oversight. The directive has yet to be issued.

There is no question but that advisory committees are useful and necessary to bring expertise and knowledge not otherwise available to Government.

This bill is not intended to impair the effectivenes of the advisory committee system, but rather to maximize its effectiveness by prescribing guidelines for the creation, administration and, where indicated, the termination of advisory committees.

The guidelines include provisions intended to mitigate the dominance of advisory committees by any special interests and bolsters these provisions with provisions for public inspection and use of advisory committee reports.

I believe that legislation to authorize the establishment of a system governing the creation and operation of advisory committees is long overdue and I support H.R. 4383.

I urge my colleagues in the House to do likewise.

Mr. HORTON. Will the gentleman yield?

Mr. BROWN of Michigan. Certainly.

Mr. HORTON. I would just like to take this opportunity to indicate my support of the bill and also to commend the gentleman in the well (Mr. BROWN) the minority leader on the subcommittee, and also Mr. MONAGAN, the chairman of the subcommittee, for the fine work they have done.

It is true that there are a large number of advisory committees, and it is time we made some order out of this situation. I think the bill goes a long way toward doing this, and toward providing some sensible management of the finances that are necessary to run these advisory committees. I think it is important, as this bill provides, that that funding now be managed under OMB guidelines and management controls.

Not only is it important that this bill provide for the phasing out of special advisory and study councils and commissions which have served their purpose, it is even more important that those statutory advisory panels, established for permanent functions by the Congress be managed and treated in a far more sensible and orderly way than is presently the case.

First, the bill provides that the President, through his Domestic Council, must at least consider and comment on the recommendations made by these advisory and investigatory bodies which look over the shoulder of operating Federal programs. Presently, it is widely felt that the report and recommendations of these panels are often merely left to gather dust on shelves in Congress and in the Executive Office.

Second, the bill contains a vital provision which can permanently eliminate some very serious existing conditions which place many Federal agencies in positions bordering on conflict of interest. Most if not all statutory advisory councils are dependent for their staff and budget funds on the very agencies and programs they are asked to review and comment on. Obviously, wherever an agency feels that too much review and criticism is likely to result from an adequately budgeted and properly staffed advisory panel, there is a built-in propensity to seek to cripple the operations of these panels by cutting or limiting their budgets and staff. In one instance I have been made aware of, a Federal agency actually caused an advisory panel's annual report to Congress to be delayed in its printing process because of either disagreement or misunderstanding of some of its contents. This is clearly in contravention of the purpose and intent of Congress in establishing these panels specifically for the purpose of having citizens and experts who serve on them provide Congress and the President with unfettered and independent evaluations of the way in which these Federal agencies are spending the taxpayers' money.

Under this bill, the control of management and budgeting of these councils and commissions would be given to the Office of Management and Budget. This is particularly important where statutory councils appointed by the President are concerned, since they report to Congress and to the President, and should not be put in a position of going hat in hand to the very agencies they review in order to obtain operating funds.

So I do want to express appreciation to the gentleman in the well and to the subcommittee for the fine job they have done in bringing this bill to the floor.

Mr. BROWN of Michigan. I thank the gentleman for his comments.

(Mr. HORTON asked and was given permission to revise and extend his remarks.)

Mr. MONAGAN. Mr. Chairman, I yield such time as he may consume to the gentleman from California (Mr. HOLIFIELD).

(Mr. HOLIFIELD asked and was given permission to revise and extend his remarks.)

Mr. HOLIFIELD. Mr. Chairman, as the chairman of the House Committee on Government Operations, I want to add my praise to the work of Congressman MONAGAN as chairman of the subcommittee and all of the Members on both sides of the aisle on this particular piece of legislation.

This piece of legislation comes as a result of a previous committee recommendation back in 1970 in the 91st Congress. This is an implementing piece of legislation which seeks to set up an inventory of all of these more than 2,000—or some 2,600, I believe—interagency and advisory committees.

The strange thing about these interagency advisory committees is that they never die. This does set up a 2-year limitation on them, and they have to be extended by affirmative action or else they die automatically.

It has been estimated that we are paying about $75 million into the expense of running these interagency advisory committees and over 20,000 salaried people are working on them, with about 4,000 staff. So this is no small matter we are talking about.

I believe, No. 1, if we have an inventory of these interagency advisory committees and study commissions and first of all have a central depository with an inventory as provided for in this bill and then, if we have a termination date on them so that they do not run on and on and on without official action renewing them, I think we can reduce a great number of them. Maybe we can cut them in half. If we can do that, it would give us a saving of possibly half of the $75 million it is costing us now to run them. I believe this is a step in the right direction. This is not a bill that will shake

the world, but it is one of those steps that you have to take in a gradual improvement of the administrative process in the executive branch of the Government.

I see no reason why anyone should oppose this bill. At least it is worth a try. It should save us a great deal of money.

I am certainly in favor of the bill and hope it will be passed unanimously.

Mr. Chairman, the Committee on Government Operations has been considering the use of advisory committees in the Federal Government for some time. During the 91st Congress the Special Studies Subcommittee, which was chaired by my distinguished colleague from Connecticut, conducted 5 days of hearings on this subject and received testimony from some 20 witnesses. Based on these hearings the full committee on December 11, 1970, issued a report entitled: "The Role and Effectiveness of Federal Advisory Committees."

The report revealed that there are at least 2,600 interagency and advisory committees in the Federal Government, that we spend approximately $75 million annually to support the efforts of a total committee membership of about 20,000 individuals and assigned staff of approximately 4,400 persons. These figures are of necessity only estimates. Even the Office of Management and Budget was unable to supply definitive information on the names and cost of advisory committees in existence in the executive branch of Government.

Not only are advisory committees widely used in the Federal Government; they are at times misused. For example, many Presidential commission reports are ignored by the President and his staff or are not fully utilized. The President and White House staff refused to accept the final report of the National Commission on Urban Problems which they activated and sponsored. The Commission's cost came to $1,500,000. The Commission on Obscenity and Pornography's report was publicly disavowed by the White House even prior to its submission. The cost of the Commission and report to the Government came to about $1,800,000.

After documenting the use and abuse of advisory committees in the Federal Government, the 1970 committee report set forth a series of recommendations. The first among these was that—

> The Congress should spell out in public law the philosophy behind and need for advisory bodies and definitively establish policy and administrative criteria for their use at all levels of government.

The bill which we are considering today will implement many of the recommendations contained in the 1970 committee report. It spells out guidelines for the creation of advisory committees; it requires an annual review of and report on advisory committees to the Congress; it establishes central responsibility for the management of advisory committees in OMB; it requires the President to report to the Congress his views on the public recommendations of Presidential advisory committees; it provides for procedures for the termination of advisory committees.

Mr. Chairman, the time has come to take action to put the system of advisory committees into order. I recommend passage of H.R. 4383.

Mr. BROWN of Michigan. Mr. Chairman, I yield 3 minutes to the gentelman from Nebraska (Mr. THONE).

(Mr. THONE asked and was given permission to revise and extend his remarks.)

Mr. THONE. Mr. Chairman, as a member of the subcommittee which considered the legislation, I have studied carefully the problem that gave rise to this bill, H.R. 4383.

I concur in the solution of the problem intended by the bill.

I rise in support of the bill with some pride of authorship, having long championed the public's right to know in having written some of Nebraska's freedom of information law. It was my privilege to author Nebraska's open record law; I also helped write Nebraska's open meetings law and a limited open court's statute in my State. I have come here to Congress solidly imbued with the philosophy of the public's right to know.

Mr. MONAGAN. Mr. Chairman, will the gentleman yield?

Mr. THONE. I would be happy to yield to the gentleman from Connecticut.

Mr. MONAGAN. I should like to express the appreciation of the subcommittee to the gentleman from Nebraska for the constructive contribution that he made to this legislation in the field that he is discussing at the present time. His expertise was very helpful in writing the type of provision we did, and I think this provision goes a long way toward protecting the public in its right to information in regard to the operation of these advisory commissions.

Mr. THONE. I thank the distinguished gentleman from Connecticut, our subcommittee chairman.

Mr. Chairman, knowing the potential for domination by special interests inherent in the use of advisory committees, I thought it especially important to make reports and background papers of such committees open to the public.

Furthermore, as Chairman MONAGAN has so graciously noted, I suggested and supported the inclusion of section 7 in the act.

Subsection (a) requires the Director of the Office of Management and Budget to provide for the filing of reports and other papers from advisory committees with the Library of Congress where they may be inspected and used by the public.

Subsection (b) provides that the Freedom of Information Act is applicable to this section.

This should remove any doubt as to whether advisory committees are subject to the Freedom of Information Act. Otherwise, I assume, it might be argued that advisory committees do not fall within the definition of agency in section 551(1) of the Freedom of Information Act and are, therefore, not subject to the act.

Mr. Chairman, I strongly favor the enactment of H.R. 4383.

I yield back the balance of my time.

Mr. MONAGAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Pennsylvania (Mr. MOORHEAD).

(Mr. MOORHEAD asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD. Thank you, Mr. Chairman.

Mr. Chairman, I rise in support of H.R. 4383, because I am vitally aware of the proliferation in the executive department of advisory commissions, and the need for some legislative control over these quasi-governmental bodies.

I congratulate the gentleman from Connecticut for the outstanding leadership he has provided in this effort, and support him fully in the vital objective which this legislation seeks to obtain.

I certainly want to associate myself with the remarks of the gentleman from Nebraska also. This does provide for adequate public access to information.

As a member of the Subcommittee on Government Information of the Committee on Government Operations, chaired by the distinguished gentleman from California (Mr. Moss), I was vitally interested in that section and I am pleased that in the subcommittee and in the full committee the relevant sections were adopted.

Mr. Chairman, the need for the Government to respond to a myriad of complex problems has necessitated the need for the advice of outside experts. However, as is often the case with any bureaucratic enterprise, the advisory committee syndrome has grown enormously in recent years.

It is time that the Congress asserted its oversight role in this area, and H.R. 4383 will accomplish that purpose. It should also be noted that this legislation will set a limit of 2 years for the life of such advisory committees unless a different termination date is set by statute. This, in itself, will cut into the proliferation of committees which have long since lost their usefulness.

Mr. Chairman, the House committee report indicates that at least 2,600 and possibly as many as 3,200 interagency and advisory committees are presently existing. Studies done by the Foreign Operations and Government Information Subcommittee corroborate these estimates. While the report correctly states that the Congress cannot administer this subbureaucracy, it does have the obligation to exercise the necessary oversight to insure that the public funds are being wisely and efficiently spent. This bill, through its reporting provisions, will insure that oversight.

Another feature of the bill which must be applauded is the requirement for public access to the deliberations and recommendations of these advisory committees. All too often, such committees meet behind closed doors, and submit advice to Executive departments without any opportunity for the public to comment on or be aware of the purport of such advice. While these reports are technically advisory, such advice is often automatically translated into agency policy.

Mr. Chairman, under the Federal Advisory Committee Standards Act, such committees will be required to give timely public notice of their meetings and to keep full and complete minutes of all transactions, with the exception

of those limited occurrences involving the national defense or foreign policy. Section 10(b) clearly states that all records and files including agenda, transcripts, studies, analyses, reports, meeting notices, and other data, compilations, and working papers which were made available or prepared for or by each advisory committee shall fall within the provisions of the Freedom of Information Act, thus insuring a considerable degree of public access to these materials and deliberations.

Mr. Chairman, the need for Congress and the public to know what the executive branch of our Government is doing makes the passage of this legislation vitally essential. I congratulate the gentleman from Connecticut (Mr. MONAGAN) for the outstanding leadership he has provided in this effort and support him fully in the important objectives which this legislation seeks to attain.

Mr. SEIBERLING. Mr. Chairman, will the gentleman yield for a question?

Mr. MOORHEAD. I yield to the gentleman?

Mr. SEIBERLING. One of the concerns about the use of advisory committees in the past under the Executive order procedures was that they might be used to circumvent the antitrust laws.

I wonder if there is any provision in this bill which would avoid the circumvention of the antitrust laws by business advisory committees of the various departments?

Mr. MOORHEAD. I prefer to yield to the gentleman from Connecticut to answer that question.

My primary concern in the legislation has been with the Freedom of Information Act. The gentleman from Connecticut has adopted those sections, but on the question of antitrust laws, I believe the chairman of the subcommittee is better fitted to answer that question.

Mr. MONAGAN. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the distinguished gentleman from Connecticut.

Mr. MONAGAN. In answer to the inquiry of the gentleman from Ohio I would say no, I do not see how this would affect the antitrust laws or affect the operation of corporations under the antitrust laws. These are simply advisory commissions. Their role is basically to advise the Executive. They are not operating commissions.

Mr. SEIBERLING. Then by the same token is there any protection for corporations that have representatives on an industry advisory committee against being prosecuted under the antitrust laws for actions taken or recommendations made in their capacity as members of such a committee or commission?

Mr. MONAGAN. If the gentleman will yield further, there is no specific provision, but of course if they did not violate the law they would not be prosecuted.

Mr. FASCELL. Mr. Chairman, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Florida.

Mr. FASCELL. Let me add that there was some concern, as the gentleman from Ohio pointed out, about an advisory committee being under prosecution because of having too many representatives of industry and creating a question of conflict of interest.

What the bill does is, by setting guidelines and opening up records, give everybody a look at these things and thus eliminate as much as possible and reasonable the problem the gentleman alludes to.

Mr. SEIBERLING. Mr. Chairman, if the gentleman will yield further, if I may say one more word, it seems to me that the arrangement proposed in this bill is infinitely preferable to the present arrangement of having the whole thing covered by Executive order, no statutory basis, and no guidelines at all. I commend the committee for its action in bringing this bill out.

Mr. MOORHEAD. Let me say further to the gentleman from Ohio that section 9 of the bill provides for termination of such advisory committees, and this is probably one of the most significant parts of the bill, if there is any danger in what the gentleman from Ohio alludes to.

Mr. SEIBERLING. If the gentleman will yield still further, I believe that the public information requirements of this bill are one of the best guarantees against such abuses.

Mr. MOORHEAD. I agree with the gentleman from Ohio.

Mr. BROWN of Michigan. Mr. Chairman, I yield such time as he may consume to the gentleman from Iowa (Mr. GROSS).

(Mr. GROSS asked and was given permission to revise and extend his remarks.)

Mr. GROSS. Mr. Chairman, I thank the gentleman from Michigan for yielding me this time in order to make certain that this proposed legislation covers advisory boards and commissions, as well as advisory committee. Am I correct in that, I would ask the gentleman from Connecticut.

Mr. MONAGAN. Mr. Chairman, if the gentleman will yield, that is correct. The definition of advisory committee is found on page 11, and it means any committee, board, commission, council, conference, panel, task force, or other similar group.

Mr. GROSS. I thank the gentleman from Connecticut, and I wish to commend the committee for bringing this bill to the floor of the House. We are surfeited with advisory boards, commissions, and committees n our Government—some 3,000 of them—and if this bill will have the effect of eliminating some of them, certainly those that are surplus to the needs of the proper conduct of government, then the committee will have performed a very meritorious service.

Mr. BROWN of Michigan. Mr. Chairman, if the gentleman from Iowa will yield, just to make sure the record is straight, it does cover all of the entities that the chairman, the gentleman from Connecticut (Mr. MONAGAN) has cited, except that we should point out it does not cover advisory committees to the courts, nor does it cover the Advisory Committee on Intergovernmental Relations. Those are the only two exceptions.

Mr. GROSS. I thank the gentleman, and I support the bill.

Mr. MONAGAN. Mr. Chairman, I yield such time as he may consume to the gentleman from Missouri (Mr. RANDALL).

Mr. RANDALL. Mr. Chairman, I thank the gentleman for yielding.

Mr. Chairman, as a member of the subcommittee that has worked on this, I must apologize for not contributing as much help to my chairman as I would have preferred. But I am pleased to rise in support of H.R. 4383.

I think we all know there has been a tendency at all levels of government—local, State, and Federal—for quite some time to have what we call government by commission or government by committee.

We are in the place we are because, when we encounter a problem, we try to solve it by letting it be studied by a committee or a commission. These commissions have proliferated and increased in number over the years until, as you have heard today, there are several thousand now in existence.

The section of this bill which seems to me should be of most interest to all of us is the provision for the termination of these advisory committees. I am not sure of the exact figures, but it is close to $75 million that is spent to pay for the membership and staffs of these different advisory committees and the administration of their studies.

The most worthwhile provision of this bill before us today is the possible saving of quite a substantial sum of money. I want to commend the gentleman from Connecticut and other members of the committee who have worked so hard.

It seems to me that, while we have a lot of differences from time to time in this body, this is one measure we can all support.

Mr. BROWN of Ohio. Mr. Chairman, I am pleased to rise in support of H.R. 4383. We live in an age when the technological, economic, social, and political questions that oonfront our daily lives are so complex that they often seem to be beyond the reach of any single individual. And, the proposed solutions to these problems challenge our society. The individuals selected to analyze and solve these problems should be particularly well suited to respond to them in order to bring the national spectrum into perspective.

With such a responsibility it is no wonder that the approach of a "blue ribbon" commission is so frequently applied to solving the complex problems facing today's decisionmakers.

My remarks may come as a surprise since it might be legitimately argued that my predecessor and late father popularized the recent wave of Federal commissions. He was the legislative author of the original Hoover Commission on the Reorganization of the Executive Branch of Government in 1949 and its successor, the Second Hoover Commission, 2 years later. These two commissions, on both of which he served, are generally given credit for saving taxpayers of our Nation billions of dollars by updating Government after World War II and improving its economy and

efficiency. His service on the Hoover Commission was shared with his friend and colleague, the Honorable CHET HOLIFIELD, now chairman of the Government Operations Committee. Clarence J. Brown's service on the Government Operations Committee led directly to my service on that panel and ultimately to my disillusionment—or at least caution—about the value of study commissions. Four years ago, I asked the Library of Congress to advise me how many special study commissions had been established in Government since the Hoover Commission. I was told that such a compilation was impossible and would only be estimated at several hundred at considerable cost to the taxpayers. Might not these funds have been more efficiently and economically spent on upgrading and expanding the staffs available to the legislative branch of Government to carry out its oversight function?

The basic problem with study commissions is where to place responsibility and accountability for the results of the programs adopted. Do we later accuse the advisory commission, or does the responsibility for decisions fall at a level of Government divorced from the review and study of the problem?

As a Member of Congress, I sometimes wonder if we are sent to Washington by our constituents to make legislative decisions and study the pressing domestic and international challenges or are we sent to Washington to approve commissions and study groups?

Under the American system of government there are three branches of Federal power—the legislative, the executive and the judicial. The regulatory bodies exercise powers that are sometimes administrative, sometimes legislative, and sometimes judicial; they have been referred to as the fourth branch of government. But I ask you whether we have not actually created a fifth branch of government—the study commission. Congress must accept accountability for our single and aggregate decisions—accountability to the people for the manner in which we allocate national resources and resolve national problems.

I do not believe that responsibility for investigating and recommending solutions to the major problems facing the Nation should be vested in the establishment of temporary commissions. What is required instead is that the Congress through the appropriate committee with adequate resources, shoulder its responsibility to review the problems before us and provide the proper forum for both the discussion and analysis of problems.

There is a regrettable tendency, both in the Congress and executive branch, to call upon commissions to study and make recommendations on matters which should be the clear and routine responsibility of existing elected and appointed officials acting through their permanent committees and committee staffs.

This tendency to shift responsibility to faceless commissions makes the average citizen question whether commissions are established to review pressing national problems, or because public officials are reluctant to accept the direct responsibility for which they were elected.

Commissions should be created only to investigate matters which are so broad that they cannot fit the jurisdictional constraints of existing congressional committees. Blue-ribbon commissions should only be empaneled to examine problems so fundamental to government that the needs for specialized knowledge or unique approach go beyond that routinely found in a congressional committee. Advisory committees and commissions should be created only when there is an obvious and overwhelming need for avoiding the political and geographic considerations which get built into a congressional committee from time to time and prevent innovative and responsive leadership. I submit this need would be rare indeed.

As far as budget, staff, and expertise are concerned, a congressional committee can match or exceed those of most temporary commissions. For every cent proposed to be spent by a commission, the Congress can more efficiently and economically use these funds. An already organized committee with an established factfinding procedure can carry out an investigation more efficiently than one created for a one-time effort only. For every staff member to be hired by a commission, a committee of Congress should be able to attract new and equally competent staff. The discretionary power already available to congressional committees to hold public or executive hearings and subpena witnesses is not always within the jurisdiction of a temporary commission. In fact, it would seem to me that a committee of the Congress would be superior to a commission in all these respects.

Of course, it can be cynically argued that the members of a congressional committee or committee staffs lack the necessary degree of special knowledge or training, or the broadmindedness and fresh viewpoint for the best ultimate deliberation and preparation of recommendations.

But how sound is this criticism? It can be countered just by the fact that a congressional committee has the ability and basic philosophic balance to obtain all necessary outside advice and assistance.

The relative value of a congressional committee over a commission is underscored when one realizes that the end product of a commission is only advisory in nature. Ultimately a commission's recommendations must be referred to a congressional committee which will then be requested to conduct the same type of deliberation and review in order to validate or reject the commission's conclusions and recommendations. A congressional committee may or may not be "second-guessed" by the public and the press, and so forth, but if a commission is not "second-guessed" by a congressional committee, then it will be ignored.

The suggestion has been made that Members of Congress lack the required time to review particular problems. The fact is though, that Members of Congress have the duty and obligation to devote the necessary time to important matters of Government and any burden can be relieved through the assistance of capable staff. Members are frequently more experienced in what should be done and what can be done, especially in a practical political sense, than are the members of a transitory commission. Congressional staff members also are more knowledgeable and practically experienced than are staff members available for temporary employment on a commission. In addition, the familiar information sources available to Members of Congress and their committees are far greater than that casually available to a study commission. Congress has a direct link to the General Accounting Office, the Library of Congress, and the Legislative Reference Service—the latter having a potentially greater capacity for processing and evaluating information in the years ahead.

I feel strongly that the Congress should place more emphasis on its own basic legislative role as the chief designer and implementer of programs to overcome our Nation's problems.

Perhaps we cannot immediately eliminate or even reduce the number of new commissions created, but we have learned too well the art of delaying or blurring a thorny issue by letting a commission study it. Hopefully, this legislation provides an answer to the present practice of burying problems and the responsibility for their solution in a proliferation of advisory commissions.

Mr. BROWN of Michigan. Mr. Chairman, I have no further requests for time.

Mr. MONAGAN. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. Pursuant to the rule, the Clerk will now read the substitute committee amendment printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Federal Advisory Committee Standards Act".

FINDINGS AND PURPOSES

SEC. 2. The Congress finds that there exist numerous committees, boards, commissions, councils, and similar groups which were established to advise officers and agencies in the executive branch of the Federal Government, that the present need for these bodies has not been adequately reviewed, that some should be disestablished or their functions revised, and that standards should be prescribed to govern the creation, administration, and operation of such bodies.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof, (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established by the President, or

(C) established by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations and ((ii) any committee which is established by a single agency and which is composed wholly of full-time officers or employees of such agency.

(3) The term "agency" has the same mean-

ing as provided for in section 551(1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

RESPONSIBILITIES OF COMMITTEES OF CONGRESS

SEC. 4. (a) In the exercise of its legislative review function pursuant to section 136 of the Legislative Reorganization Act of 1946, as amended, or clause 28 of rule XI of the Rules of the House of Representatives, each standing committee of the Senate and House of Representatives shall make a continuing review of the activities of the advisory committees under its jurisdiction with a view to determining whether the responsibilities assigned such advisory committees should be revised, whether any such advisory committee should be merged with any other advisory committee, or whether any such advisory committee any longer performs a necessary function. Each such standing committee shall take appropriate action to obtain the enactment of the legislation necessary to implement recommendations resulting from any review performed under this subsection.

(b) In its consideration of legislation creating, or authorizing the creation of, an advisory committee, each standing committee of the Senate and of the House of Representatives shall endeavor to assure that no advisory committee will be created if its functions are adequately performed by an existing advisory committee, or by such standing committee, and that such legislation—

(1) contains a clearly defined purpose for the advisory committee

(2) requires the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee,

(3) contains appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of its independent judgment,

(4) Contains provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate, and

(5) contains provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 5. (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be the principal agency within such office having responsibility for matters relating to advisory committees.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee then in existence with a review to determining whether it is achieving its objectives; whether the responsibilities assigned to it should be revised; whether it should be merged with any other advisory committee; and whether it any longer performs a useful function. Upon the completion of the Director's review he shall make recommendations to the President with respect to actions he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Where appropriate, agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall, to the extent not otherwise prescribed by statute or executive order, prescribe administrative guidelines and management controls to be applicable to advisory committees. The Director shall, to the maximum extent feasible, provide advice, assistance, guidance, and leadership to advisory committees with a view to the improvement of their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of the advisory committees advising him. The Director shall cooperate with the Civil Service Commission in carrying out the Intergovernmental Personnel Act of 1970 with respect to training members and staffs of advisory committees.

RESPONSIBILITIES OF THE PRESIDENT

SEC. 6. (a) The President shall assign to such agency as he deems appropriate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President shall make a report to the Congress containing his views on any recommendations contained in such report and stating either his proposals for action with respect to the recommendations or his reasons for inaction.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceeding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the name and occupation of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of advisory committees established by statute which the President recommends be abolished together with his reasons therefor.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 7. (a) The Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

(b) The provisions of section 552 of title 5, United States Code, shall apply to this section.

RESPONSIBILITIES OF AGENCY HEADS

SEC. 8. (a) Each head of a department or agency of the United States shall, subject to applicable statutes, establish administrative guidelines and management controls for advisory committees set up to advise him, which shall be consistent with directives of the Director under section 5(c).

(b) Each agency shall maintain general information on the nature and function of each advisory committee within its jurisdiction.

TERMINATION OF ADVISORY COMMITTEES

SEC. 9. (a) Each advisory committee (other than an advisory committee established by statute) which is—

(1) in existence on the effective date of this Act, or

(2) established after the effective date of this Act, shall be discontinued following the expiration of the two-year period following such effective date or the date of its establishment, whichever is later, unless prior to the expiration of such two-year period the President or the agency, as the case may be, continues the existence of such advisory committee by appropriate action. Each such advisory committee, may be continued in existence for successive two-year periods by appropriate action on the part of the President or the agency, as the case may be, prior to the expiration of each such two-year period.

(b) Any advisory committee established by a statute enacted after the date of enactment of this Act shall terminate upon the expiration of the two-year period following the date of enactment of the statute establishing such committee, unless its termination is otherwise provided for by statute.

ADMINISTRATION OF ADVISORY COMMITTEES

SEC. 10. (a)(1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Unless otherwise provided by statute, no member of an advisory committee or its staff shall be paid compensation for his services at a rate in excess of the rate specified at the time of such service for grade GS–18 in section 5332 of title 5, United States Code, in the case of an individual serving full time, or the daily equivalent of the annual basic rate of pay specified at such time for such grade, in the case of service other than full-time service.

(2) Nothing in paragraph (1) shall limit—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) any individual who immediately before his service with an advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(b) Unless otherwise provided by law or by the agency head which creates it, each advisory committee shall meet at the call of its chairman not less than two times each year. Minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee. The provisions of section 552 of title 5, United States Code, shall apply to all records and files, including agenda, transcripts, studies, analyses, reports, meeting notices, and any other data, compilations, and working papers which were made available to or prepared for or by each advisory committee.

(c) Each advisory committee shall give timely public notice of the time and place of committee meetings by such means as it shall deem appropriate, except in cases in which such notice would endanger the national defense and foreign policy.

(d) Each advisory committee shall keep such records of its activities as will fully disclose the disposition of any funds which may be at its disposal and the nature and extent of its activities in carrying out its functions. The Comptroller General of the United States, or any of his duly authorized representatives, shall have access, for the purpose of audit, to any books, documents papers, and records of each advisory com

mittee created by statute or reorganization plan.

EFFECTIVE DATE

SEC. 11. This Act shall become effective ninety days after the date of its enactment.

Mr. MONAGAN (during the reading). Mr. Chairman, I ask unanimous consent that the substitute committee amendment be considered as read and open to amendment at any point.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

AMENDMENT OFFERED BY MR. MOSS

Mr. MOSS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. Moss: Page 20, insert after line 2 the following:

INAPPLICABILITY OF CERTAIN PROVISIONS TO REGULATORY AGENCY ADVISORY COMMITTEES

SEC. 11. Sections 5, 6, 7, 8(a), 10(a) of this Act shall not apply to an advisory committee established in the interest of obtaining advice or recommendations for one or more of the following agencies:

(1) The Civil Aeronautics Board.
(2) The Federal Communications Commission.
(3) The Federal Power Commission.
(4) The Federal Trade Commission.
(5) The Interstate Commerce Commission.
(6) The Securities and Exchange Commission.
(7) The Federal Maritime Commission.

Redesignate section 11 as section 12.

(Mr. MOSS asked and was given permission to revise and extend his remarks.)

Mr. MOSS. Mr. Chairman, I want to commend the subcommittee and its chairman for an excellent job. I think we need to bring order out of the rather chaotic situation which exists in the Federal Government in relation to advisory committees.

I think the record clearly calls for some check on the hydra-like proliferation of these committees and for control of their operations. I am concerned, however, that in acting to impose needed controls, the Congress is about to give the executive branch still another means of influencing the decisionmaking processes of the independent regulatory agencies.

In the interest of economy and organization, this bill would place substantial power in the Office of Management and Budget to establish guidelines for advisory committees and to direct the agencies' use of them.

I think it is entirely appropriate that the Office of Management and Budget perform this function for executive agencies. This office has traditionally been used by the President to coordinate policy among the executive departments. The Director of this office is one of the President's most intimate advisers and can be expected to compel executive agencies under the control of the President to comply with the President's instructions. However, because the Office of Management and Budget is so closely identified with and subject to the will of the Executive, it is particularly inappropriate to give control to OMB over the formation and activities of advisory committees to independent regulatory agencies. Here the Congress would be achieving economy and control at the price of the regulatory freedom of these agencies.

When the regulatory commissions were first established it was made clear that they were intended to perform as subordinate arms of the Congress. Each was designed to be "independent" from the Executive or executive departments with the hope that these agencies be removed as far as possible from partisan politics and political influence.

Unfortunately, over the years the Congress has sat by and permitted the executive branch to gradually acquire influence over the independent agencies. In each case controls by the executive branch were acquiesced in or expressly permitted by the Congress in the interest of economy and organization.

I will not attempt to discuss the many ways in which our independent regulatory commissions are now influenced by the executive branch. It is important, however, to note a few instances of control which have greatly eroded the regulatory freedom of these agencies.

Under the Judges Act of 1925 and the practices which have arisen under it the Justice Department asserts great influence on independent regulatory agency enforcement powers by reason of the Department's ability to control civil litigation, to settle actions, and to determine whether or not to appeal agency cases.

Under the Federal Reports Act of 1942 OMB exerts considerable control over the agencies' investigatory processes by reason of its power to coordinate governmental questionnaries and requests for information.

Also, the executive branch asserts influence over the regulatory policy of the agencies by requiring that all legislative recommendations or communications with the Congress which concern pending legislation be cleared through OMB. And, perhaps most importantly, by requiring independent regulatory commissions to submit their budget requests through OMB the Executive has gained power over the purse of the agencies. In many respects this has given the Executive ultimate authority to control agency policy and programs.

Mr. Chairman, I think it is time that we embark on a deliberate program of reversing this pattern. After all, the regulation of commerce is by specific constitutional provision given to the Congress as its responsibility, and starting back in the 1870's with the creation of the Interstate Commerce Commission Congress attempted to fashion a different kind of agency to carry out these functions.

The CHAIRMAN. The time of the gentleman from California has expired.

(By unanimous consent, Mr. Moss was allowed to proceed for 3 additional minutes.)

Mr. MOSS. Mr. Chairman, I recognize that this is not a major breach in the law, but it is a part of a pattern which has persisted far too long. It is a compromise of the independence of vitally sensitive agencies of this Government carrying out the responsibilities of the Congress, and the compromise has not been as a result of any partisan action. I recall when President Kennedy arrived on the scene in Washington and he had Dean Landis along with a package of goodies that would have further compromised the independence of these regulatory commissions. This is an attractive group of agencies for any Executive to control or gain dominance over, and I do not think we should permit that by any inadvertence, however attractively packaged.

I sincerely trust that in the spirit of maintaining the integrity of the independence of the regulatory process of discharging our responsibilities in the regulation of commerce that we will adopt this amendment, which will free these agencies of the direct supervision of the OMB and of the President in regard to the operations of the advisory committees. This would not change certain of the statutory provisions of this language here which would impose a greater accountability and a more orderly procedure for operation of the advisory commissions or committees.

Mr. Chairman, the terms of this bill have been fully and very ably explained by the subcommittee chairman, the gentleman from Connecticut (Mr. MONAGAN). Let me say at the outset that I heartily endorse the objectives of this legislation. The subcommittee chairman has done an outstanding job in uncovering and calling our attention to the enormous economic waste and inefficiency which has been characteristic of our use of governmental advisory committees.

The record clearly calls for some check on the Hydra-like proliferation of these committees and for control of their operations. I am concerned, however, that in acting to impose needed controls, the Congress is about to give the executive branch still another means of influencing the decisionmaking processes of the independent regulatory agencies.

In the interest of economy and organization, this bill would place substantial power in the Office of Management and Budget to establish guidelines for advisory committees and to direct the agencies' use of them.

It is entirely appropriate that the Office of Management and Budget perform this function for executive agencies. This office has traditionally been used by the President to coordinate policy among the executive departments. The Director of this Office is one of the President's most intimate advisers and can be expected to compel executive agencies under the control of the President to comply with the President's instructions. However, because the Office of Management and Budget is so closely identified with and subject to the will of the Executive, it is particularly inappropriate to give control to OMB over the formation and activities of advisory committees to independent regulatory agencies. Here, the Congress would be achieving economy and control at the price of the regulatory freedom of these agencies.

When the regulatory commissions were first established, it was made clear that they were intended to perform as subordinate arms of the Congress. Each was designed to be independent from the executive or executive departments with the hope that these agencies be removed as far as possible from partisan politics and political influence. Unfortunately,

over the years, the Congress has sat by and permitted the executive branch to gradually acquire influence over the independent agencies. In each case controls by the executive branch were acquiesced in or expressly permitted by the Congress in the interest of economy and organization.

I will not attempt to discuss the many ways in which our independent regulatory commissions are now influenced by the executive branch. It is important, however, to note a few instances of control which have greatly eroded the regulator freedom of these agencies.

Under the Judges Act of 1925, and the practices which have arisen under it, the Justice Department asserts great influence on independent regulatory agency enforcement powers by reason of the Department's ability to control civil litigation, to settle actions, and to determine whether or not to appeal agency cases.

Under the Federal Reports Act of 1942, OMB exerts considerable control over the agencies' investigatory processes by reason of its power to coordinate governmental questionnaires and requests for information. Also, the executive branch asserts influence over the regulatory policy of the agencies by requiring that all legislative recommendations or communications with the Congress which concern pending legislation be cleared through OMB. And, perhaps most importantly, by requiring independent regulatory commissions to submit their budget requests through OMB, the Executive has gained power over the purse of the agencies. In many respects this has given the Executive ultimate authority to control agency policy and programs.

I should emphasize that this is not a partisan issue. Presidents of both parties have attempted to control the regulatory commissions, and it is quite natural that if Congress continues to assign to the Executive powers over these agencies, the White House will make every effort to bring these agencies even more securely under its control.

The amendment which I offer would exempt advisory committees to independent regulatory agencies from those portions of this bill which provide for control by OMB or by the President. The remaining substantive sections of this bill which provide for public access to committee records and reports, for automatic termination, and for the balanced representation of view will remain in effect with respect to such committees.

Let me repeat and reemphasize that the regulatory agencies which are listed in my amendment are not agencies in the Executive department; they are designed to be independent agencies of the Congress established to carry out quasi-legislative functions. My intent is merely to avoid, in this bill, what I consider to be a further erosion of the regulatory freedom and independence of these agencies.

Mr. MONAGAN. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I certainly agree with the gentleman from California in desiring to resist all attempts on the part of the Executive to encroach upon the freedom of operation of the independent agencies. However, I submit and believe that this legislation does not constitute a threat to their independence. In fact, it should assist in improving their efficiency of operation.

It must be remembered that the power that is given to the Office of Management and Budget is a ministerial power. It does not authorize the office to go into the merits of any causes that may come before these regulatory bodies. This bill simply is creating a formula whereby the Office may report regularly on the matters which are the subject of this legislation here today.

I point out that in many instances the interagency committees which advise the independent agencies have already come under the provisions of a similar regulation in OMB circular A-63, and under this regulation they have been reporting to the Office of Management and Budget, formerly the Bureau of the Budget, since 1964, apparently without any substantial repercussions.

So it is for this reason that I oppose this amendment and also because the purpose of the bill is to create a central place of registration and a central clearing house to which the activities of these commissions throughout the Government will be reported, and the objectives which we have in the bill will be maintained. But I honestly believe and submit that this legislation will not make any substantial change in the power that the Executive exercises or might seek to exercise over the independent agencies, the regulatory agencies which are covered in this amendment.

This amendment would effect several of the important sections of this bill. One of the provisions which would be eliminated by the amendment provides for the filing with the Library of Congress of reports of any such advisory commission. Another one is the general provision about the establishment of the secretariat, and these agencies would be exempted. I just say that as far as these important regulatory bodies are concerned, their adequate regulation would be frustrated if this amendment were adopted.

Mr. DINGELL. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I would like to begin by paying a word of very sincere tribute to our good friend, the gentleman from Connecticut, and the members of the committee who have brought this legislation to the floor. The legislation addresses itself to a most important problem, one which has been a source of great concern and outrage to me. I think the bill is fundamentally and essentially a very good one.

Mr. Chairman, I would refer my colleagues to the comments which I have had the opportunity to make earlier on the floor on a particular one of these advisory committees, the National Industrial Pollution Control Council, the NIPCC, whose meetings have been entirely secret, and whose minutes have been unavailable, which is composed largely of the major polluters among American industry, whose function apparently has been to guide and direct the actions of the Department of Commerce on pollution abatement programs and policies of the United States. I refer my colleagues to the CONGRESSIONAL RECORD of August 4, 1971, page E8808, and also to the CONGRESSIONAL RECORD of July 16, 1971, page E7830, in which I discourse upon the very unsavory activities of this particular agency. I would also point out I had the opportunity to make observations in the CONGRESSIONAL RECORD, appearing on this particular agency, in which I made some remarks at page E7831, again on July 16, 1971.

I pointed out that this Commission, which is supposed to serve the public interest, was simply serving as a forum for the polluters and as a device to bend and to alter and to adversely affect environmental programs and pollution abatement programs.

Mr. MONAGAN. Mr. Chairman, will the gentleman yield?

Mr. DINGELL. I yield to the gentleman from Connecticut.

Mr. MONAGAN. I certainly agree with the point the gentleman is making. The subcommittee and the committee also agree. It was for this reason that we included in section 3 of the bill the requirement that the committees be fairly balanced in terms of the interests of the nominees, and also that they not be influenced by the appointing authority or by any special interest, but that they have independent judgment.

Mr. DINGELL. The gentleman has gone even further in the bill, and required that minutes be kept, that they maintain records of persons present, and a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee, all to be made available to the public.

This is all to the good. I certainly commend my friend for it. I pay high tribute to him, for he is an able Member of this body.

Certainly the bill before us is an excellent one. However, I do believe there is a very fundamental question at stake before us; that is, whether or not we should treat regulatory agencies, created as arms of the Congress, as parts of the executive branch.

Certainly every President during my service in this body has sought to usurp the powers and the prerogatives of the Congress with regard to these independent agencies, and has sought to convert them in one fashion or another into arms of the Executive, sometimes by controlling appointments, sometimes by controlling budgets, sometimes by controlling the work product, sometimes by controling the output or the questionnaires, and sometimes by actually seeking to transfer major functions from these agencies to the departments.

In the case of the Department of Transportation there has been a continuing effort going forward to seize and to take over control of the various agencies in the field.

The President now has an Office of Communications Policy, proliferated to a degree no Government agency ever has grown before. It has multiplied its population, its staff and its payroll many times since the present administration

came into power. Its whole goal is to take over the functions of the Federal Communications Commission, again so as to diminish the powers and prerogative of the Congress over regulatory agencies, which properly are one of our arms.

I serve on three committees which deal with the activities of regulatory agencies. One is the Select Committee on Small Business, where I run a subcommittee which has to do with the activities of regulatory agencies. Another is the Committee on Merchant Marine and Fisheries, where we have a specific responsibility and concern in the area for the Maritime Commission. The last, of course, is the Committee on Interstate and Foreign Commerce, where I sit next to my dear friend from California. On that committee I have observed a continuous effort on the part of the executive—not necessarily of this administration, but on the part of the executive of all administrations—to usurp the functions involved.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

(By unanimous consent, Mr. DINGELL was allowed to proceed for 3 additional minutes.)

Mr. DINGELL. Mr. Chairman, on these committees I have observed the continuous effort by the Executive to usurp the functions and the prerogatives of these agencies, which are the creatures and the arms of Congress, which are supposed to be responsive to us, which are supposed to set out independent policies independent of the administration, which are supposed to carry out the laws enacted by Congress and to act responsive to the will of the Congress and not as a part of the executive structure.

So, for this reason, the amendment offered by my good friend and colleague from California, I believe, is of extreme importance.

If Members will read the bill before them they will see it is a good bill—I intend to support it whether or not this amendment prevails—and they will observe very clearly that it does place to a greater degree still than unfortunately is the case today the arm of the Executive upon these so-called independent agencies.

It requires that advisory councils be set up by these independent agencies which are supposed to advise them as arms of the Congress on important questions of national policy and to be responsible to whom? To the Bureau of the Budget.

The gentleman from California and I and members of the Committee on Interstate and Foreign Commerce are much concerned about this. We are engaged in a major effort on another front to seek to emancipate these independent agencies from the dead hand of the Bureau of the Budget and the executive so that they might regulate as they are supposed to according to the wishes of the Congress whose creatures, whose arms, and whose subsidiary bodies they are.

It is for that reason, although I recognize the gentleman from Connecticut and his fine committee have done an extraordinary job in legislating and in coming forward to this body with an extraordinary bill, that I ask my collegeaues to join in support of what I regard to be an amendment which is very much in the public interest and one which does recognize the fundamental difference between the quasijudicial or the alphabetical agencies or the independent agencies and the other executive agencies which are properly the subject of this bill.

So I do ask my colleagues to support the gentleman from California and try to see to it in this instance that the prerogatives of the Congress are carried forward until the day when we might further emancipate these independent agencies from the dead hand of the Bureau of the Budget and the executive and return them to the agency which is properly responsible for their administration; namely, the Congress of the United States.

Mr. BROWN of Michigan. Mr. Chairman, I rise in opposition to the amendment.

(Mr. BROWN of Michigan asked and was given permission to revise and extend his remarks.)

Mr. BROWN of Michigan. Mr. Chairman and my colleagues in the House, I would appreciate it if you would follow with me for 1 minute the significance of the adoption of this amendment.

The amendment, of course, relates to the exemption of the so-called independent agencies from certain sections of the bill, but, lest my colleagues think they are insignificant, let me run through them for you.

If these so-called independent agencies are removed from section 5 of the bill, there is no review imposed upon them of their responsibilities. They are not subject to recommendations regarding revision of their functions and purposes; they are not subject to a determination as to whether or not such an advisory committe continues to perform a useful function. That is section 5.

Eliminating them from section 6 would provide that there would be no evaluation by the President required.

Moreover, exempting them under section 6 would remove the requirement that a report by the President be made annually as to the activities, the status, and the composition of these advisory committees and the dates of their meetings, the composition of their memberships, and the cost to the Federal Government.

Under section 7, if this amendment prevails, the so-called independent agencies would be exempted from a requirement to file with the Library of Congress and make public copies of their reports.

Under section 10(a) these independent agencies would be, under the amendment, exempted from compliance with the uniform rates of pay of members applicable to other advisory committees. The amendment would remove the so-called executive agencies and their advisory committees from the salary control of section 10(a) and from the maximum salaries set forth in the bill.

There may be something to be said for maintaining the independence of these independent agencies, but the question is, the benefit that might be derived by the total exemption of these independent agencies significant when compared with the benefit to be derived by including them under this legislation.

Frankly, the gentleman from California, the author of this amendment, offered his amendment in the full committee. At that time he at least subjected these independent agencies to an audit by the General Accounting Office.

I could not support that amendment in the full committee for the reasons I have stated and I cannot support the amendment here.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. BROWN of Michigan. I would be glad to yield to the gentleman from California.

Mr. MOSS. I think for the purpose of having the RECORD correct here, I would have made the activities of these agencies and committees subject to comparable controls through the General Accounting Office. All of these agencies are subject to audit by the General Accounting Office, which is in itself an independent arm of the Congress. I think that would be very appropriate. It would not compromise the independence of the agencies as it does now place them in the single office, the most amenable Presidential office, the Office of Management and Budget, whomever the occupant of the White House is.

Mr. BROWN of Michigan. I would say in response to the gentleman's comments that probably the most impeding thing about this is that most of these agencies are composed of Presidential appointments, and since they are Presidential appointments, it seems to me that the elimination of Presidential influence that you are attempting to accomplish by this amendment is relatively insignificant.

Mr. MOSS. Mr. Chairman, will the gentleman yield further?

Mr. BROWN of Michigan. Certainly I yield further to the gentleman from California.

Mr. MOSS. You do not include the courts here or any advisory committees to them. The President appoints all the judges of our Federal courts of the United States. The independence of the judicial branch is maintained very carefully in this legislation.

Mr. BROWN of Michigan. I trust that the gentleman is not suggesting that the independent agencies now in this Government constitute the fourth branch of Government?

Mr. MOSS. I would not suggest that they constitute a fourth estate in the Government, but I would suggest that in relationship to the legislative branch, that relationship is far stronger and more pertinent than the relationship to the Executive.

Mr. BROWN of Michigan. Reasonable men can differ on that issue.

Mr. ECKHARDT. Mr. Chairman, I move to strike the requisite number of words.

(Mr. ECKHARDT asked and was given permission to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, the distinguished gentleman from Connecticut has done so much in proposing a good bill for this body, but is in my opinion somewhat incorrect and the gentleman from California is correct in his interpretation with respect to the power of the director in his surveillance over these commissions.

The gentleman from Connecticut has stated that the function of the director is purely ministerial.

It is very difficult for me to come to that conclusion when I read the language on page 14, line 3, wherein it says:

The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibility of each advisory committee then in existence with a view to determining whether it is achieving its objectives;

Now, it is very difficult for me to see that this is purely ministerial, when it looks to the whole question of whether the committee is fulfilling a desirable objective, and when it looks toward advising the President not to further extend the existence of that committee.

Further, he is called upon to determine whether a committee advising, for instance, regulatory agencies any longer performs a useful function.

Now, presumably, if the President and the director feel that a committee is not properly advising an administrative agency, an independent agency, it would decide that that committee's advice was not a useful function because they do not think that is the way that agency should decide, and that is not ministerial. That goes to questions of subjective judgment as to whether or not the regulatory agency would act properly if it responded to the advisory committee's recommendations. The bill provides that—

Upon the completion of the director's review he shall make recommendations to the President with respect to actions he believes should be taken.

Now, I want to stress to this committee that I, like the gentleman from California (Mr. Moss) agree that the provisions of this act are desirable with respect to those committees which advise executive bodies, but not as to those agencies which advise independent regulatory agencies. I submit that with the Moss amendment the total bill will be more logical, more homogenous, and will work better than without the amendment.

The Moss amendment does not touch section 9. Section 9 provides that these committees shall terminate within a period of 2 years from the effective date of the act, or from the time they came into existence, I believe it is, whichever is the later. And then it says that each such advisory committee may be continued in existence for successive 2-year periods by appropriate action on the part of the President, or the agency, as the case may be, subsequent to the expiration of each such 2-year period. Therefore it will be noted that section 5 is not exactly comparable to section 9. Section 5 calls for review by the director with the report to the President to discontinue a committee. But the President is not the one to report to with respect to all committees, as is indicated in section 9.

I would submit to the committee here that the amendment offered by the gentleman from California (Mr. Moss) is a quite logical amendment, an amendment which is harmonious with the general purpose of the bill, and an amendment which will make the entire bill more internally consistent, so that the amendment should be supported.

Mr. FASCELL. Mr. Chairman, I rise in opposition to the amendment, and I move to strike the requisite number of words.

Mr. Chairman, I think that we have an agreement on the fact that we have a problem in terms of a multiplicity of advisory committees, with a multiplicity of guidelines, methods, and operations that need to be corrected.

One of the major purposes of the bill is to establish congressional control over the proliferation of committees. That is the reason the bill is here. This bill will not affect the advice given by members of advisory committees. It will not affect the appointment of members of advisory committees. It has nothing to do with the substance of advisory committee actions. Therefore, unless we change it by statute the bill will not affect the independence of those committees because we make it quite clear in this legislation that the manner of appointment of committee members that now exists remains untouched. If the President appoints members of a Presidential advisory committee, he continues to do so under his power and authority. If an agency has power and authority to appoint advisory committee members under general statute now, the agency would continue to perform that particular function under this bill. If the Congress creates an advisory committee by statute, we shall continue to have a right to repeal or create. The only way we touch a committee or affect a committee in this bill, and that applies to all of them, is they terminate at the end of 2 years, unless appropriate action is taken to continue them. As far as the President is concerned, that means by Executive order. If it is an agency advisory committee, it means whatever their appropriate action is under the authority that they have. If it is Congress, we must reauthorize. Now, we do that so that we can get some kind of control with respect to the creation and indefinite continuation of these committees.

As to the amendment, the proponents of the amendment obviously make a very solid case in terms of the fact that you have got to keep independent agencies independent. You should not have independent agencies under the control of the President. We are talking about Presidential direction through the OMB. And as far as the management guidelines for advisory committees are concerned, we could spell the guidelines out here in this statute, if we wanted to take the time to clutter the statute with that kind of detail. We do not want to do that. What we are doing is delegating the authority to promulgate management guidance to OMB. Yes, if you will, we are putting those advisory committees of the independent agencies, for the purpose of management only, within the purview of OMB.

Now the gentleman from Texas pointed out exactly what the limitations are. It is not a question of control. He has read very carefully into the RECORD and the bill is explicit and without any ambiguity as to the kind of authority the Director of the OMB would have in making the guidelines and in making a report.

When he makes his report then what does he do with it? He takes it to the President for such action as the President may take under the law. That is quite clear, he cannot affect any authority of the Congress to act any way it sees fit.

While you can make a plausible case for the amendment by dividing the authority to promulgate management guidelines, you would have to set up two different guidelines—two separate directions under two managements and that is one of the things we are trying to get away from.

In order to pay for the price of coordination, you do in a small way as a matter of theory what the gentleman from California rightly says.

But I think the bill does not in any way directly impinge upon the operation of an independent agency and in no way affects the operation even of an advisory committee. I think for management coordination, direction, and guidelines, we can afford to pay the price.

Mr. ECKHARDT. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman.

Mr. ECKHARDT. Does the gentleman from Florida not agree with me that when the Director has authority to engage in surveillance over this agency, making a comprehensive review of the activities and responsibilities of each advisory committee, and then recommend as to whether or not the advisory committee should be extended—does the gentleman not agree with me he is not just recommending with respect to procedure but with respect to substance?

Mr. FASCELL. I would say to the gentleman from Texas, it might be if the Director had any authority to do anything about it. But he is not given any authority to do anything other than make recommendations.

He can recommend, for example, that the advisory committee of the SEC serves no useful function and he can recommend to the President that it be abolished. The question then arises as to whether or not under existing law the President has the authority to abolish the advisory committee. Of course, the President may recommend to the Congress the abolition of any advisory committee.

The point is—in full response to the gentleman from Texas and the issue he raised—that if the President has the authority to abolish the advisory committees of independent agencies now, it is not changed under the bill. If he does not have the authority to abolish now, he will not be given it by the bill.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. FASCELL. I yield to the gentleman.

Mr. MOSS. Of course, the President does not by law directly, but because we have eroded that independence, one being through budget control, if the Bureau of the Budget and the OMB Director could determine that an advisory committee and agency X in his judgment is not performing a useful function after this review, he could then of course inform the agency head—we will see that you do not get any funds next year for this advisory committee.

Mr. HOLIFIELD. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I am very zealous personally about maintaining the independence of the regulatory agencies. I am not as apprehensive as my friends, the gentleman from California (Mr. Moss), the gentleman from Michigan (Mr. DINGELL), and the gentleman from Texas (Mr. ECKHARDT) seem to be about this legislation.

I asked the staff to give me some figures relating to these regulatory agencies and the number of advisory or interagency committees that they have. I find they have 12 advisory committees and they have 21 interagency committees that deal with other agencies that are of interest to the regulatory agencies.

Mr. MONAGAN has told us that these 21 interagency committees have been in existence since 1964 and these committees have been reporting to the old Bureau of the Budget and the new Office of Management and Budget, which succeeded them.

My conclusion is this, that the committees of statutory jurisdiction—and I am referring specifically to the Interstate and Foreign Commerce Committee, on which Mr. ECKHARDT, Mr. DINGELL, and Mr. Moss serve—have done nothing apparently in the last 8 years to prohibit this report to the BOB and the Office of Management and Budget. They have complete statutory oversight. They can call in and ask for any kind of report that they wish and any kind of recommendation that is made in relation to these committees at any time, and therefore I say they have complete control over any abuse that might be attempted, if it is attempted.

Mr. DINGELL. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman from Michigan.

Mr. DINGELL. The gentleman is making a point that concerns me very much, and I want respectfully to give the gentleman my views.

There recently came to my attention a major problem related to the responsibility of the Food and Drug Administration, the Federal Trade Commission, and the Federal Communications Commission. In other instances I have found problems which have related, say, to the Federal Power Commission and the Federal Trade Commission. As a result of my effort, in many instances there have been joint committees which have been set up comprising the memberships of the affected Federal agencies, independent agencies, together with some of the other Federal agencies, to try to work out a common approach to major problems in the regulatory agency field.

The problem that I have with the bill without the amendment offered by my friend from California (Mr. Moss) is that these interagency committees would not continue to be able to function in the same efficient way.

Mr. HOLIFIELD. Why not? I would like to know.

Mr. DINGELL. This would be placed under the supervision of the Bureau of the Budget, something which I find violently offensive.

Mr. HOLIFIELD. The Bureau of the Budget, after consulting, as the bill requires, with the Federal agencies involved, would set up broad guidelines, but I cannot see them interfering with the function of the interagency committees without at least some attention being given by the statutory oversight committee, which is your committee. I just cannot see them doing that. I do not share the apprehension which the gentleman has.

Mr. MOSS. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman from California.

Mr. MOSS. I remember the years the gentleman and I joined in opposing here, earlier in the session, the creation of the OMB as it is now created.

Mr. HOLIFIELD. That is correct.

Mr. MOSS. You are saying the committees having direct legislative jurisdiction go to the OMB. The gentleman knows that the OMB pleads privilege against the Congress. It is not willing to compromise the independence of the Executive as we are, apparently, the independence of the independent regulatory agency.

Mr. HOLIFIELD. If the gentleman will allow me to reply, I had no trouble with the Office of Management and Budget being substituted for the BOB. The trouble I had was in setting up the Domestic Council over the OMB, between the Office of Management and Budget and the President, and the amendment—well, the reason I opposed the organization plan was based not on the Office of Management and Budget, because I believe the old Budget Bureau, which had a Management Division in it, should have had a stronger Management Division in it than it had. My basic objection—and I think the gentleman will recall—was the setting up of a 60-man Domestic Council which actually stood between the Office of Management and Budget and the President.

Mr. MOSS. It still stands, does it not?

Mr. HOLIFIELD. I think it still does stand, and I still object to it in the same way. But we are talking now, not about the Domestic Council, but about the Office of Management and Budget.

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. Moss).

The amendment was rejected.

The CHAIRMAN. If there be no further amendments to be proposed, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. STRATTON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 4383) to authorize the Office of Management and Budget to establish a system governing the creation and operation of advisory committees throughout the Federal Government which are created to advise officers and agencies of the Federal Government, pursuant to House Resolution 957, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the amendment.

The amendment was agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. BIAGGI. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 357, nays 9, not voting 65, as follows:

[Roll No. 140]

YEAS—357

Abbitt	Brotzman	Davis, Ga.
Abernethy	Brown, Mich.	Davis, S.C.
Abzug	Broyhill, N.C.	Delaney
Adams	Broyhill, Va.	Dellenback
Addabbo	Buchanan	Dellums
Alexander	Burke, Fla.	Denholm
Anderson, Calif.	Burke, Mass.	Dent
Anderson, Ill.	Burleson, Tex.	Derwinski
Andrews, Ala.	Burlison, Mo.	Dickinson
Andrews, N. Dak.	Byrne, Pa.	Dingell
Annunzio	Byrnes, Wis.	Donohue
Archer	Byron	Dorn
Arends	Cabell	Downing
Ashbrook	Camp	Drinan
Ashley	Carey, N.Y.	Dulski
Aspin	Carlson	Duncan
Aspinall	Carney	du Pont
Baker	Carter	Dwyer
Baring	Casey, Tex.	Edmondson
Barrett	Cederberg	Edwards, Ala.
Begich	Chamberlain	Edwards, Calif.
Belcher	Chappell	Erlenborn
Bell	Clawson, Del	Evans, Colo.
Bennett	Clay	Evins, Tenn.
Bergland	Cleveland	Fascell
Betts	Collier	Findley
Bevill	Collins, Ill.	Fish
Biaggi	Collins, Tex.	Fisher
Biester	Colmer	Flood
Blackburn	Conable	Flowers
Blatnik	Conte	Flynt
Boland	Conyers	Foley
Bolling	Corman	Ford, William D.
Bow	Cotter	Forsythe
Brademas	Coughlin	Fountain
Brasco	Crane	Fraser
Bray	Culver	Frenzel
Brinkley	Curlin	Frey
Broomfield	Daniel, Va.	Fulton
	Daniels, N.J.	Fuqua
	Danielson	

Gaydos	McEwen	Rousselot
Gettys	McFall	Roy
Giaimo	McKay	Roybal
Gibbons	McKevitt	Runnels
Gonzalez	McKinney	Ruppe
Goodling	McMillan	Ruth
Grasso	Madden	Ryan
Gray	Mahon	St Germain
Green, Oreg.	Mailliard	Sandman
Green, Pa.	Mallary	Saylor
Griffin	Mann	Scherle
Griffiths	Martin	Schmitz
Gross	Mathias, Calif.	Schneebeli
Grover	Mathis, Ga.	Schwengel
Gubser	Matsunaga	Scott
Gude	Mayne	Sebelius
Hagan	Mazzoli	Seiberling
Haley	Meeds	Shipley
Hall	Melcher	Shoup
Halpern	Metcalfe	Shriver
Hamilton	Michel	Sikes
Hammer-schmidt	Mikva	Sisk
	Miller, Calif.	Skubitz
Hanley	Miller, Ohio	Smith, Calif.
Hanna	Mills, Ark.	Smith, Iowa
Hansen, Idaho	Minish	Snyder
Hansen, Wash.	Mink	Spence
Harrington	Minshall	Stanton, J. William
Harsha	Mizell	
Harvey	Monagan	Steele
Hastings	Montgomery	Steiger, Ariz.
Hawkins	Moorhead	Steiger, Wis.
Hays	Morgan	Stephens
Hechler, W. Va.	Mosher	Stokes
Heckler, Mass.	Murphy, Ill.	Stratton
Heinz	Murphy, N.Y.	Stuckey
Helstoski	Myers	Sullivan
Hicks, Mass.	Natcher	Symington
Hicks, Wash.	Nedzi	Talcott
Hillis	Nelsen	Taylor
Hogan	Nichols	Teague, Calif.
Holifield	Nix	Terry
Horton	Obey	Thompson, Ga.
Howard	O'Hara	Thompson, N.J.
Hull	O'Konski	Thomson, Wis.
Hungate	O'Neill	Thone
Hunt	Patten	Tiernan
Hutchinson	Pelly	Udall
Ichord	Pepper	Ullman
Jacobs	Perkins	Van Deerlin
Jarman	Pettis	Vander Jagt
Johnson, Calif.	Peyser	Vanik
Johnson, Pa.	Pike	Veysey
Jonas	Pirnie	Vigorito
Jones, Ala.	Poage	Waldie
Jones, N.C.	Podell	Wampler
Karth	Poff	Ware
Kastenmeier	Powell	Whalen
Kazen	Price, Ill.	Whalley
Keating	Price, Tex.	White
Kemp	Pucinski	Whitehurst
King	Purcell	Whitten
Koch	Quie	Widnall
Kuykendall	Quillen	Wiggins
Kyl	Railsback	Williams
Kyros	Randall	Wilson, Bob
Latta	Rangel	Wilson, Charles H.
Leggett	Rees	
Lennon	Reuss	Winn
Lent	Rhodes	Wright
Link	Riegle	Wyatt
Lloyd	Roberts	Wydler
Lujan	Robinson, Va.	Wyman
McClory	Robison, N.Y.	Yates
McCloskey	Roe	Yatron
McClure	Rogers	Young, Fla.
McCollister	Roncalio	Zablocki
McCulloch	Rooney, N.Y.	Zion
McDade	Rooney, Pa.	Zwach
McDonald, Mich.	Rosenthal	
	Roush	

NAYS—9

Burton	Long, Md.	Reid
Dow	Moss	Satterfield
Eckhardt	Pickle	Wolff

NOT VOTING—65

Abourezk	Clausen, Don H.	Gallagher
Anderson, Tenn.	Davis, Wis.	Garmatz
Badillo	de la Garza	Goldwater
Bingham	Dennis	Hathaway
Blanton	Devine	Hébert
Boggs	Diggs	Henderson
Brooks	Dowdy	Hosmer
Brown, Ohio	Eilberg	Jones, Tenn.
Caffery	Esch	Kee
Celler	Eshleman	Keith
Chisholm	Ford, Gerald R.	Kluczynski
Clancy	Frelinghuysen	Landgrebe
Clark	Galifianakis	Landrum
McCormack	Pryor, Ark.	Staggers
Macdonald, Mass.	Rarick	Stanton, James V.
Mills, Md.	Rodino	Steed
Mitchell	Rostenkowski	Stubblefield
Mollohan	Sarbanes	Teague, Tex.
Passman	Scheuer	Waggonner
Patman	Slack	Wylie
Preyer, N.C.	Smith, N.Y.	Young, Tex.
	Springer	

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Brown of Ohio.
Mr. Rodino with Mr. Hosmer.
Mr. Teague of Texas with Mr. Smith of New York.
Mr. Waggonner with Mr. Devine.
Mr. Stubblefield with Mr. Gerald R. Ford.
Mr. James V. Stanton with Mr. Goldwater.
Mr. Steed with Mr. Springer.
Mr. Garmatz with Mr. Clancy.
Mr. Boggs with Mr. Keith.
Mr. Passman with Mr. Landgrebe.
Mr. Henderson, with Mr. Esch.
Mr. Rostenkowski with Mr. Davis of Wisconsin.
Mr. Sarbanes with Mr. Don H. Clausen.
Mr. Staggers with Mr. Frelinghuysen.
Mr. McCormack with Mr. Eshleman.
Mr. Jones of Tennessee with Mr. Wylie.
Mr. Kluczynski with Mr. Mills of Maryland.
Mr. Landrum wtih Mr. Dennis.
Mr. Caffery with Mr. Badillo.
Mrs. Chisholm with Mr. Anderson of Tennessee.
Mr. Mollohan with Mr. Bingham.
Mr. Macdonald of Massachusetts with Mr. Kee.
Mr. Young of Texas with Mr. Scheuer.
Mr. Celler with Mr. Patman.
Mr. Clark with Mr. Mitchell.
Mr. Brooks with Mr. Hathaway.
Mr. Diggs with Mr. de la Garza.
Mr. Rarick with Mr. Pryor of Arkansas.
Mr. Eilberg with Mr. Galifianakis.
Mr. Gallagher with Mr. Blanton.
Mr. Slack with Mr. Preyer of North Carolina.
Mr. Long of Louisiana with Mr. Abourezk.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes."

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONAGAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the legislation just passed, and to include extraneous material.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Geisler, one of his secretaries.

CORRECTION OF VOTE

Mr. ROUSH. Mr. Speaker, on rollcall No. 139, which occurred earlier today, I am recorded as not voting. I was present and voted "yea." I ask unanimous consent that the RECORD be corrected accordingly.

The SPEAKER. Is there objection to the request of the gentleman from Indiana?

There was no objection.

PERSONAL ANNOUNCEMENT

Mr. PETTIS. Mr. Speaker, because I was on the Senate side testifying before the Appropriations Committee on behalf of flood control in California, I was not present on rollcall No. 139.

I strongly support House Joint Resolution 55 and had I been present I would have voted "aye."

The erection of this memorial to the Seabees is small indeed when considered in the light of this country's great debt to the Seabees.

FIRST ANNUAL REPORT ON THE ADMINISTRATION OF THE FEDERAL RAILROAD SAFETY ACT OF 1970—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

The SPEAKER laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Interstate and Foreign Commerce:

To the Congress of the United States:

I transmit herewith the First Annual Report on the administration of the Federal Railroad Safety Act of 1970 (Public Law 91-458, of October 16, 1970), as required by Section 211 of that Act. The report covers the period October 16, 1970 through December 31, 1971.

RICHARD NIXON.

THE WHITE HOUSE, *May 9, 1972.*

CONFLICT IN SOUTHEAST ASIA

(Mr. KING asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KING. Mr. Speaker, President Nixon last night stated in no uncertain terms that the United States will not capitulate to the North Vienamese demands or betray South Vietnam at the point of a gun. His decision to mine all North Vietnam ports, to halt ships entering the Harbor of Haiphong and to cut rail lines was not an easy decision. Under the circumstances, however, I believe the President took the only honorable course of action open to him.

The massive invasion by the North Vietnamese Communists amounts to a serious breach of international law, a blatant disregard for numerous agreements entered into by the North Vietnamese, and a dangerous escalation of a war which had entered into its twilight period. Moreover, the safety and security of more than 60,000 American men were and are being jeopardized by this unwarranted invasion.

In announcing his plans to the Nation last night, President Nixon placed the responsibility for the continuation

tinuing review of existing advisory committees to determine which should be abolished, merged, or revised, and to follow certain guidelines in the creation of any new committees.

It requires the OMB to institute a similar comprehensive review of advisory committees and recommend changes to the President; to prescribe administrative guidelines and management controls; and to report annually to Congress on the activities, status, and changes, including costs, of such committees.

It authorizes the President to assign responsibility for evaluation and action on recommendations of Presidential advisory committees, and to report on the disposition of such recommendations.

It provides for uniform procedures in the establishment and conduct of advisory committees. These include the filing of a committee charter, requirements of notice and public access to meetings and records, subject to certain exceptions, and the monitoring of such meetings by a Government employee.

It provides for the opportunity for advisory committee meetings to be closed where they deal with matters exempted from disclosure under the Freedom of Information Act.

It provides for the termination of advisory committees after 2-year periods, subject to formal renewal under certain procedures.

I would like to emphasize at the outset that many of the numerous advisory committees, boards, commissions, and similar groups have provided a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions. It is not the intent of the legislation to impair this useful function where its essentiality has been demonstrated.

However, evidence obtained during public hearings both by the House and Senate committees clearly indicates that there are a large and undetermined number of advisory committees which have outlived their usefulness and must be either reorganized or eliminated. Unfortunately, neither the Federal agencies, nor the Office of Management and Budget, nor the Congress, has thus far developed any effective mechanism for separating the wheat from the chaff, for monitoring advisory committee effectiveness, for assuring their usefulness, for coordinating their work products, or for preventing creation of unnecessary or duplicating committees, and thus reducing their cost to Government.

Further evidence has shown that there exists a tendency among advisory committees to operate in a closed environment, permitting little opportunity for the public to be informed of their deliberations and recommendations, and of the materials and information on which they rely. This provides a suspicion, deserved or not, that advisory committees hold a privileged seat in the decisionmaking process, and may exert certain subjective influences upon the decisionmaker which are not necessarily best for the public interest.

Thus, the legislation provides both a housekeeping function in the interests of efficiency and economy in Government and a function of disclosure and objective counsel—so that the public will know what advice their Government is getting, and how they might add their contribution to the information process.

Mr. President, I want to emphasize this objective of efficiency and economy because I think it is one of the most powerful arguments in favor of its enactment.

The Special Subcommittee of the House Committee on Government Operations counted over 1,500 such advisory bodies at the Federal level, costing the taxpayer about $65 million annually, with a total committee membership of over 20,000 individuals and an assigned staff of some 4,400 persons. But these figures are coservative, taken only from answers to the subcommittee survey. Estimates range up to 3,200 interagency and advisory committees running over $100 million a year.

The committee revealed that many advisory groups existed in name only; their reports were ignored or forgotten, their missions were ill-defended, leading to duplication and the loss of time and money; and their membership lacked objectivity as well as the balancing of geographic and public interests. Some advisory committees were asked to make judgments on matters which regulatory agencies were given their own expert staff and authorities to resolve. Others were sparsely funded and infrequently called into session, rendering no meaningful advice or information. One agency, after establishing a central management review mechanism, was able to abolish 125 of its advisory committees in 9 months.

The committee found that Congress has never made a sustained inquiry into the operations of advisory and interagency committees from the standpoint of Government efficiency and economy, nor has it established any guidelines for itself in authorizing the use of such committees. It found further that the Office of Management and Budget, despite a 1962 Executive Order No. 11007 and several BOB memoranda, has not carried on adequate supervisory and managerial role with respect to advisory committees, nor has OMB made any comprehensive review as to the number and relative value of such committees. Further, the committee found, among other things, that some Presidential advisory committees, in particular, lacked adequate administrative guidelines and any mechanism for evaluation and followup of their public reports and recommendations, including what action was taken by the Executive—positive or negative—on such recommendations.

These are problems that have grown over time. They are not the fault of any one Chief Executive or administration. They are the result of a system which has grown up in the Federal bureaucracy and which must be reformed and made more effective.

Mr. President, the House passed H.R. 4383, the Federal Advisory Committee Standards Act, which in large measure covers the same ground as S. 3529. We are very close to developing some critically needed legislation here, and it is my urgent hope that the Senate will adopt this bill so that we can complete our task with the House.

Mr. President, there are committee amendments. I move the adoption of the committee amendments.

The PRESIDING OFFICER. Does the Senator from Montana ask that the amendments be considered en bloc?

Mr. METCALF. I ask unanimous consent that the committee amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, the committee amendments are considered and agreed to en bloc.

Mr. METCALF. Mr. President, I have one further amendment. This is an amendment that was requested by the former chairman of the Committee on Government Operations, Mr. McCLELLAN, who received a letter from the Central Intelligence Agency suggesting such an amendment. I send the amendment to the desk, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 4, after line 12, insert the following new subparagraph: "(b) Nothing in this Act shall be construed to apply to an advisory committee which furnishes advice or recommendations only with respect to national security or intelligence matters."

On page 4, on line 13, change "(b)" to "(c)".

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Montana.

The amendment was agreed to.

Mr. METCALF. Mr. President, I ask unanimous consent that the letter to Senator McCLELLAN from the CIA, dated July 18, 1972, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., July 18, 1972.

Hon. John L. McCLELLAN,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: We wish to submit the views of this Agency on S. 3529, 92nd Congress, a bill "To prescribe certain standards and procedures governing the establishment and operation of advisory committees in the Federal Government, and for other purposes."

In its present form, S. 3529 raises several problems for the Agency. The provisions of most concern are the requirements:

(a) To publicize the existence of an advisory committee;

(b) To file with the Library of Congress a committee charter involving information on the committee's objective and scope of activity and a description of its duties;

(c) To file committee reports with the Library of Congress;

(d) To provide to the Librarian of Congress committee records, transcripts, working papers, drafts, studies and other documents upon a committee's termination;

(e) To audit the nature and extent of the committee's activities by the Comptroller General, and

(f) To make a determination in writing and publish it in the *Federal Register* prior to each meeting which is to be closed to the public and for which the minutes of the meeting are not to be available upon the request of any person because of security considerations.

The National Security Act of 1947 requires this Agency:

"To correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities . . ." (50 U.S.C. 403).

In order to correlate and evaluate foreign intelligence information, it is necessary to obtain advice and recommendations from diverse sources, frequently using the committee system for this purpose. These committees are usually composed solely of Federal employees and officers but a number have representatives from the private sector as well. In both cases, however, their work involves sensitive matters directly bearing upon a statutory requirement:

"That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure; . . ." (50 U.S.C. 403).

It is believed that the requirements of S. 3529 previously noted could conflict, both with the statutory responsibility to protect intelligence sources and methods and with the provisions of the Central Intelligence Agency Act of 1949 which exempt this Agency from:

"The provisions of any other law which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency . . ." (50 U.S.C. 403g).

It is clear from the hearings before your Committee on legislation similar to S. 3529 that the principal objective of the legislation is to assure that advisory committees operate in the public interest. In the case of committees dealing exclusively with sensitive national security and foreign intelligence matters, it appears that the public interest is best served by protecting their endeavors in line with the provisions of law noted above.

In view of the foregoing, it is recommended that S. 3529, or any similar legislation reported out by your Committee, contain a provision similar to that which appears in S. 1637, which was introduced by Senator Metcalf on 22 April 1971, as follows:

"APPLICABILITY

"SEC. 4. This Act shall not apply to an advisory committee—(1) which furnishes advice or recommendations only with respect to national security or intelligence matters; . . ."

We will be happy to provide any additional information that your Committee may request.

The Office of Management and Budget has advised that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

RICHARD HELMS,
Director.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. JAVITS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. LONG. Mr. President, a parliamentary inquiry.

On whose time is this quorum call?

The PRESIDING OFFICER. It would have to come out of the 20 minutes allotted to the Senator from Montana.

Mr. LONG. I thought that amendment had been disposed of.

Mr. METCALF. Mr. President, as I understand, I have 20 minutes on the entire bill. I have offered an amendment, and it has been disposed of. I think the Senator from New York wants to offer an amendment.

The PRESIDING OFFICER. Debate is not in order. A quorum call is in progress.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, I send to the desk an amendment and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 4, line 12, strike the period, and insert a comma and the following: ", provided however that the provisions of this act shall not apply to any advisory committee established for or utilized by the Federal Reserve System."

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Mr. President, I yield such time as he may need to the Senator from New York.

Mr. JAVITS. I thank the Senator.

Mr. President, I have a letter from the Chairman of the Federal Reserve System which points out that the Federal Reserve System, due to an open market and other operations, much as it sympathizes with the purposes of this bill, simply cannot have the Federal Reserve Advisory Council within that same category. It is fine to live in a fish bowl, but everyone knows the speculation, financial, and otherwise, which goes on around the world respecting the Federal Reserve System's operations. In order to have an advisory council at all, which would be very useful to them, they simply have to ask to be exempted from the provisions of this bill.

They point out that the expenses of the Federal Advisory Council are paid by the Federal Reserve Banks out of their own earnings. They really do not represent a charge upon the Government.

I ask unanimous consent that the letter addressed to Senator MCCLELLAN, chairman of the Committee on Government Operations, from the Chairman of the Federal Reserve Board, dated June 2, 1972, be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

FEDERAL RESERVE SYSTEM,
Washington, D.C., June 2, 1972.

HON. JOHN L. MCCLELLAN,
Chairman, Committee on Government Operations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in the hope that when your Committee considers pending bills relating to advisory committees you will take into account problems that these bills pose in relation to the Federal Advisory Council. The FAC was created in 1913 by the Federal Reserve Act, and is a valuable component of the Federal Reserve system. It is composed of twelve members, one from each Federal Reserve District, elected by the Federal Reserve Banks. The statute provides that the FAC shall meet at least four times a year, but additional meetings may be called by the Federal Reserve Board or at the FAC' own initiative.

As I understood them, the bills now under consideration, S. 3529 and H.R. 4383, have two general objectives: to eliminate unnecessary expenditures of appropriated funds in connection with advisory committees and to assure openness in the operations of advisory committees.

The modest expenses of the FAC are paid by the Federal Reserve Banks out of their earnings. Since the FAC does not use appropriated funds, it should not be subject to guidelines established by the Office of Management and Budget governing the use of such funds. Similarly, subjecting the FAC to GAO audit, as section 10(d) of H.R. 4383 would do, is both unnecessary and in conflict with the procedures established under the Federal Reserve Act for auditing the expenditures of the Federal Reserve System.

The provisions of S. 3529 and H.R. 4383 regarding public disclosure of the proceedings of the FAC could also prove troublesome. Since the FAC's discussions cover a number of subjects such as monetary policy, the international payments system, and liquidity conditions in the banking system, premature publication of views candidly expressed at FAC meetings could prove harmful. Discussion at these meetings is now full and frank, and would be seriously inhibited if the meetings were open to the public, as provided in S. 3529, or even if minutes of the meetings were published, as provided in H.R. 4383.

The House Committee on Government Operations included in H.R. 4383 a provision excluding from coverage the Advisory Committee on Intergovernmental Relations, in recognition of "its unique character." We believe that the Federal Advisory Committee is also unique, and for the reasons outlined in this letter, we hope that it will also be excluded from any bill your Committee reports to the Senate.

Sincerely yours,

ARTHUR F. BURNS.

Mr. JAVITS. I hope the author of the bill will find the amendment satisfactory.

Mr. METCALF. Mr. President, there are important considerations in this bill that provide for openness of hearings, presentation and keeping of transcripts, and other matters that are clearly not involved and should not be a part of the considerations as to the Federal Reserve Board. As the Senator from New York has pointed out, many of the propositions that are analyzed by the board need to have secrecy of consideration and secrecy as to their activities as they affect the open market operations. So I certainly concur with the Senator from New York in this amendment, and hope it will be agreed to.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from New York.

The amendment was agreed to.

Mr. METCALF. Mr. President, I ask for third reading of the bill, as amended.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. PERCY. Mr. President, I would like to comment for just a moment on this bill. I think this is one of the most significant bills to reach the Senate floor this year. It does not require extensive discussion here, but it has been the product of a great deal of study by and cooperation between the majority and minority members of the Government Operations Committee.

For the first time, it establishes a congressionally mandated system of controls over the Federal advisory committees that constitute what has been called the "fifth branch of Government."

of section (1) (d) (2), shall be effective with respect to annuities awarded or recertified after the enactment of this Act; and clauses (ix) and (x) shall be effective with respect to calendar years after 1971.

(b) The first three sections of this Act, except for subsections (d) and (e) of section 1, and the amendments made by such sections, shall cease to apply as of the close of June 30, 1973. Annuities accruing for months after June 30, 1973, and pensions due in calendar months after June 30, 1973, shall be computed as if the first three sections of this Act, except for subsections (d) and (e) of section 1, and the amendments made by such sections, had not been enacted.

SEC. 6. It is the policy of the Congress of the United States that the 20-percent increase in annuities of Railroad Retirement beneficiaries provided by this Act, as well as the 10-percent and 15-percent increases provided by Public Law 92-46 and Public Law 91-377, respectively, all of which will expire by the terms of such Acts on June 30, 1973, can be made permanent only if at the same time a method is adopted to insure the receipt of sufficient revenues by the Railroad Retirement Account to make such Account financially solvent based on sound actuarial projections. Accordingly, representatives of employees and retirees and representatives of carriers shall, no later than March 1, 1973, submit to the Senate Committee on Labor and Public Welfare and the House of Representatives Committee on Interstate and Foreign Commerce a report containing the mutual recommendations of such representatives based upon their negotiatians and taking into account the report and specific recommendations of the Commission on Railroad Retirement designed to insure such solvency. A copy of the report of such representatives shall also be submitted to the Railroad Retirement Board, which, no later than April 1, 1973, shall submit to such committees of the Congress a report containing its views and specific recommendations, and those of the administration, with reference to the report submitted by such representatives.

Amend the title so as to read: "An Act to amend the Railroad Retirement Act of 1937 to provide a temporary 20 per centum increase in annuities, to simplify administration of the Act, and for other purposes.".

Mr. STAGGERS (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

Mr. FREY. Mr. Speaker, reserving the right to object—and I shall not object—will the gentleman explain the purpose of the amendment?

Mr. STAGGERS. Mr. Speaker, this is essentially a House bill with a Senate amendment to it. The Senate put in an amendment that industry and labor recommended to make the bill more sound.

Mr. FREY. That is the only change?

Mr. STAGGERS. That is the only change.

Mr. FREY. Mr. Speaker, I understand. I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from West Virginia?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

CONFERENCE REPORT ON H.R. 4383, EXECUTIVE BRANCH ADVISORY COMMITTEE

Mr. MONAGAN. Mr. Speaker, I call up the conference report on the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes, and ask unanimous consent that the statement of the managers be read in lieu of the report.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

Mr. HALL. Mr. Speaker, reserving the right to object, I would inquire of the gentleman if this involves any violation of the 3-day House rule?

Mr. MONAGAN. That is correct.

Mr. HALL. I thank the gentleman for his forthright reply.

Mr. Speaker, I am strongly in favor of the advisory committee's limitations in this bill. Therefore, I will not object to the violation of the Reorganization Act of 1970 and the clause in the rule pertaining to the 3-day printing and availability for Members prior to consideration in this particular instance; but it is not to become a precedent, nor is it to be considered a procedure, unless we change the Reorganization Act of 1970.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

The Clerk read the statement.

(For conference report and statement, see proceedings of the House of September 18, 1972.)

Mr. MONAGAN (during the reading). Mr. Speaker, I ask unanimous consent that further reading of the statement be dispensed with.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

Mr. MONAGAN. Mr. Speaker, I do want to begin by thanking the gentleman from Missouri for his consideration in this matter, and to assure him that the request is simply for the purpose of expediting the business of the House and moving along this legislation, which is, I think, extremely important in bringing about a vast improvement in the operation of our Government.

There was really no objection to the legislation in the committee, and it passed this House with, I think, only 8 votes against it. All the members of the conference committee signed the report.

Mr. Speaker, I am reporting to the House on the outcome of the successful conference with the other body on H.R. 4383. This bill passed the House on May 9, 1972, and passed the Senate on September 12, 1972.

Members will recall that the bill H.R. 4383 was designed to lay down ground rules for the operation of the estimated 3,200 advisory committees in the Federal Government. These committees with their membership of 20,000 persons and annual cost of approximately $75 million have grown to justify their description as a "fifth arm of the Government."

The Senate struck all after the enacting clause of the House bill and substituted a Senate amendment. The conference substitute contains all the essential elements of the House bill.

The committee of conference agreed with the Senate amendment to change the title of the bill to the "Federal Advisory Committee Act."

The conference substitute adopts the definition of "advisory committee" contained in the House bill with some modification. The conference substitute definition includes committees which are established or utilized by the President or one or more agencies or officers of the Federal Government. It excludes from the definition of "advisory committee," in addition to the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, and any committee which is composed wholly of full-time officers or employees of the Government.

The conference substitute exempts from the provisions of the bill any advisory committee established or utilized by the Central Intelligence Agency or by the Federal Reserve Board.

The conference substitute adopts the provision of the House bill which requires the President or any agency head who creates an advisory committee to follow the guidelines laid down for standing committees of Congress when they are considering legislation establishing advisory committees.

The conference substitute adopts a compromise between the Senate amendment and the House bill regarding the responsibilities of the President with respect to public recommendations of Presidential advisory committees. The conference substitute provides that the President "may" delegate responsibility for evaluating and taking action with respect to public recommendations of Presidential advisory committees. It further provides that the President or his delegate "shall" submit a report to the Congress stating his proposals for action or his reasons for inaction with respect to such public recommendations.

The conference substitute adopts the provision of the House bill requiring the President to make an annual report to the Congress on the number, membership, and cost of advisory committees in the executive branch. The President may exclude from such report information which, in his judgment, should be withheld for reasons of national security.

The conference substitute contains a provision requiring the Director of OMB to include in his budget recommendations a summary of the amounts necessary for the expenses of advisory committees, which is similar to a provision contained in the Senate amendment.

The committee of conference also agreed to provisions similar to those contained in the Senate amendment—setting forth the procedure to be followed when advisory committees are es-

Page 6, line 1, after "official" insert: "or official guest".

Page 6, strike out lines 6 to 9, inclusive, and insert:

"(b) Whoever willfully intimidates, coerces, threatens, harasses, or willfuly obstructs a foreign official or an official guest shall be fined not more than $500, or imprisoned not more than six months, or both."

Page 7, line 4, strike out "and".

Page 7, line 4, after "organization'" insert: , "and 'official guest'".

Page 7, after line 6, insert:

"(e) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States."

Page 7, strike out the line following line 9 and insert:

"112. Protection of foreign officials and official guests."

Page 7, line 22, strike out "or".

Page 7, line 22, after "official" insert: "or official guest".

Page 8, line 4, strike out "and".

Page 8, line 4, after "organization'" insert: ", and 'official guest'".

The SPEAKER. Is there objection to the request of the gentleman from Massachusetts?

Mr. HALL. Mr. Speaker, reserving the right to object, as I understand this, the request is concurred in only by the ranking members of the Committee on the Judiciary and the subcommittee concerned. I also understand that it is urgent. Of course, this is a unanimous-consent request to concur in the Senate amendments. If it has not received full committee action, of course, it might well be subject to a point of order.

Mr. Speaker, in addition to this, the gentleman who makes the unanimous consent request has been courteous enough to confer, and his staff has provided information at his request concerning the Senate amendment that would add the term "official guests" to be designated by the Secretary of State to the coverage, so that it would be a Federal crime to murder, kidnap, assault, harass, or injure the property of any such official guest.

Mr. Speaker, quite outside of the question of procedure, I cannot help but wonder how many additional Federal police or marshals would be required at the time, for example, of a visit by a head of state designated as an official guest; whether there is any arrangement for after-the-fact designation of an official guest; and whether indeed it would not require that the Federal taxpayer out-of-pocket pay all of the expenses for protection of "official guests" to the United Nations.

Finally, certainly I believe it is fair to assume on the basis of what we have studied here today that it would result in innumerable requests from interested third parties, such as we of the Congress, for example, for our friends who might be journeying here from overseas to be designated as "official guests."

For all of these reasons I am constrained to object to this procedure, which is not in order; and, Mr. Speaker, I do object.

The SPEAKER. Objection is heard.

AMENDING RAILROAD RETIREMENT ACT OF 1937

Mr. STAGGERS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 15927) to amend the Railroad Retirement Act of 1937 to provide a temporary 20-percent increase in annuities, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert: That (a) section 3(a) of the Railroad Retirement Act of 1937 is amended by inserting at the end thereof the following new paragraph:

"(5) The individual's annuity computed under the preceding provisions of this subsection and that part of subsection (e) of this section which precedes the first proviso shall be increased by 20 per centum.".

(b) Section 2(e) of such Act is amended—

(1) by striking out "section 3(a) (3) or (4) of this Act" and inserting in lieu thereof "section 3(a) (3), (4), or (5) of this Act";

(2) by striking out the second sentence of the last paragraph; and

(3) by adding at the end thereof the following new paragraph:

"The spouse's annuity computed under the other provisions of this section shall (before any reduction on account of age) be increased by 20 per centum. The preceding sentence and the other provisions of this subsection shall not operate to increase the spouse's annuity (before any reduction on account of age) to an amount in excess of the maximum amount of a spouse's annuity as provided in the first sentence of this subsection. This paragraph shall be disregarded in the application of the preceding two paragraphs."

(c) Section 2(1) of such Act is amended by striking out "the last two paragraphs" and inserting in lieu thereof "the last paragraph plus the two preceding paragraphs".

(d) Section 3(e) of such Act is amended—

(1) by striking out the word "and" after clause (iv) in the second paragraph thereof and inserting after the semicolon in clause (v) in such second paragraph the following new clauses:

"(vi) individuals not entitled to an annuity under section 2 or 5 of this Act shall not be included in the computation under such first proviso except a spouse who could qualify for an annuity under section 2 (e) or (h) of this Act if the employee from whom the spouse's annuity under this Act would derive had attained age sixty-five, and such employee's children who meet the definition as such contained in section 216(e) of the Social Security Act; (vii) after an annuity has been certified for payment and such first proviso was inapplicable after allowing for any waiting period under section 223(c)(2) of the Social Security Act, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under such first proviso, or was then applicable but later became inapplicable, any recertification in such annuity under such first proviso shall not take into account individuals not entitled to an annuity under section 2 or 5 of this Act except a spouse who could qualify for an annuity under section 2(h) of this Act when she attains age sixty-two if the employee from whom the spouse's annuity would derive had attained age sixty-five, and who was married to such employee at the time he applied for the employee annuity; (viii) in computing the amount to be paid under such first proviso, the only benefits under title II of the Social Security Act which shall be considered shall be those to which the individuals included in the computation are entitled; (ix) the average monthly wage for an employee during his lifetime shall include (A) only his wages and self-employment income creditable under the Social Security Act through the later of December 31, 1971, or December 31 of the year preceding the year in which his annuity began to accrue, and (B) his compensation up to the date his annuity began to accrue; and (x) in computing the average monthly wage in clause (ix) above, section 215(b)(2)(C)(ii) of the Social Security Act shall, solely for the purpose of including compensation up to the date the employee's annuity began to accrue, be deemed to read as follows: 'the year succeeding the year in which he died or retired'"; and

(2) by striking out in the third paragraph thereof ", or on application, would be".

(e) Section 5(1)(1) of such Act is amended by striking out from the first sentence thereof "and (g)" and inserting in lieu thereof "(g), and (k)".

(f) Section 5 of such Act is further amended by inserting at the end thereof the following new subsection:

"(p) A survivor's annuity computed under the preceding provisions of this section (except an annuity in the amount determined under the proviso in subsection (a) or (b)) shall (before any reduction on account of age) be increased by 20 per centum."

SEC. 2. (a) All pensions under section 6 of the Railroad Retirement Act of 1937, all annuities under the Railroad Retirement Act of 1935, and all survivor annuities deriving from joint and survivor annuities under the Railroad Retirement Act of 1937 shall be increased by 20 per centum.

(b) All such widows' and widowers' insurance annuities which are payable in the amount of the spouse's annuity to which the widow or widower was entitled, shall, in cases where the employee died prior to October 1, 1972, be increased by 20 per centum.

(c) All such joint and survivor annuities shall be computed under section 3(a) of the Railroad Retirement Act of 1937 and shall be reduced by the percentage determined in accordance with the election of such annuity.

SEC. 3. All recertifications required by reason of the amendments made by this Act shall be made by the Railroad Retirement Board without application therefor.

SEC. 3. For the purposes of approximating the offsets in railroad retirement benefits for increases in social security benefits by reason of amendments prior to the Social Security Amendments of 1971, the Railroad Retirement Board is authorized to prescribe adjustments in the percentages in the Railroad Retirement Act of 1937 and laws pretaining thereto in order that these percentages, when applied against current social security benefits not in excess of the primary insurance amount applicable for an everage monthly wage of $650, will produce approximately the same amounts as those computed under the law in effect, except for changes in the wage base, before the Social Security Amendments of 1971 were enacted.

SEC. 5. (a) The amendments made by this Act, except for subsections (d) and (e) of section 1, shall be effective with respect to annuities accruing for months after August 1972 and with respect to pensions due in calendar months after September 1972. The provisions of clauses (vi) through (x), which are added by section 1(d)(1) of this Act, and the provisions of section 1(d)(2) of this Act, shall be effective as follows: clause (vi) shall be effective with respect to annuities awarded after the enactment of this Act; clauses (vii) and (viii), and the provisions

tablished—and requiring the designation of a committee management office in each agency having advisory committees.

The conference substitute provides for publication in the Federal Register of timely notice of advisory committee meetings, except where the President determines otherwise for reasons of national security. The conference substitute further provides for public access to advisory committee meetings subject to restrictions which may be imposed by the President or the head of any agency to which an advisory committee reports. Such restrictions may be imposed after it is determined that an advisory committee meeting is concerned with matters listed in section 552(b) of title V, United States Code. The conference substitute also provides that subject to section 552 of title V, United States Code, the records and other papers of advisory committees shall be available for public inspection and copying.

The conference substitute requires that a designated officer or employee of the Government attend each advisory committee meeting. No such meeting may be conducted in his absence or without his approval. Except in the case of Presidential advisory committees, the agenda of such meeting must be approved by him.

The committee of conference agreed to the adoption in the conference substitute of a provision similar to the provision contained in the Senate amendment that required agencies or advisory committees to make any transcripts of their proceedings or meetings available to the public at actual cost of duplication.

The conference substitute provides for the termination of any advisory committee within 2 years after the effective date of the act or the date of its creation, whichever is later, unless it is renewed by the creating authority or its duration is otherwise provided for by law.

All the outstanding differences with the Senate have been resolved by the committee of conference. This bill is the culmination of considerable work both here and in the other body. In the House the measure has had strong bipartisan support. In the other body the measure has progressed under the able leadership of Senators METCALF, ROTH, and PERCY.

I strongly urge that the conference report be accepted by the House.

Mr. BROWN of Michigan. Mr. Speaker, as a conferee on this bill, I am satisfied the conference report an eminently fair compromise between the Senate and House-passed versions of the legislation and I believe it provides a viable system for the establishment and administration of advisory committees in the executive branch of the Federal Government. I can assure the House that the intent and purpose of the House bill were retained in the conference report. Moreover, I believe it is consistent with the objectives of the administration as set forth in the new Executive Order 11671 which are incorporated in part in the conference report.

The chairman has well described the major areas of compromise and I will not take the time of the House to reiterate his statements. However, I would like to emphasize that the conference report advances the public's right to know in this vitally important area. It provides for public access to advisory committee meetings not subject to special restrictions and provides for the availability of the records and other papers of advisory committees subject to the provisions of the Freedom of Information Act.

Other than that, as the chairman has indicated, the bill would provide much-needed guidelines for the creation, review, and reporting of advisory committees and relieve the confusion and disorganization which now exist.

I recommend the adoption of the conference report.

Mr. HORTON. Mr. Speaker, will the gentleman yield?

Mr. MONAGAN. I yield to the gentleman from New York.

Mr. HORTON. Mr. Speaker, I shall be very brief. I do want to commend the gentleman from Connecticut and the gentleman from Michigan and other members of the subcommittee for the work that they did in putting this legislation together and following it through in the conference report, and the commendable job they have done.

I think this is a very important step forward. I would like to ask the chairman of the committee, Mr. HOLIFIELD, a question.

Mr. MONAGAN. I yield to the gentleman from California (Mr. HOLIFIELD).

Mr. HORTON. Am I correct in the understanding that this bill does not apply to such organizations as the National Academy of Sciences and its various committees which make studies and submit reports to Federal agencies on request?

Mr. HOLIFIELD. The gentleman is quite correct. If he will refer to the joint explanatory statement of the committee of conference at page 10, the first full paragraph, it states as follows:

> The Act does not apply to persons or organizations which have contractual relationships with Federal agencies nor to advisory committees not directly established by or for such agencies.

As the gentleman knows, the National Academy of Sciences was founded by Congress and, therefore, it comes under that category.

Mr. HORTON. So, it would be excluded?

Mr. HOLIFIELD. That is correct.

Mr. HORTON. I thank the gentleman.

Mr. HOLIFIELD. Mr. Speaker, I just want to say that the findings of the subcommittee revealed that there are in the neighborhood of some 3,200 of these advisory committees. We had quite a bit of trouble finding out how many there were, and we are not sure that 3,200 covers it altogether. One agency reported 383 advisory committees, and later revised it to 420, and their latest revision is 511 agency advisory committees. Their latest revision is 511 interagency advisory committees. They are all over the map. Many of them ought to be abolished.

This bill, I believe, will go a long way toward getting a proper inventory of these advisory committees. Our committee will follow up on this and see that the obsolete ones or those which contradict each other are abolished.

I believe this is a move toward economy and efficiency. I want to thank the gentleman from Michigan (Mr. BROWN), the ranking minority member of the subcommittee, and the gentleman from Connecticut (Mr. MONAGAN), the chairman, for the good work they and the other members of the committee have done. I believe this is a step in the right direction, toward economy and efficiency.

Mr. MONAGAN. I thank the gentleman for his remarks.

I also thank the gentleman from New York (Mr. HORTON) for his generous statement, and the gentleman from Michigan (Mr. BROWN) for his cooperation at all stages of this legislation, which truly is a bipartisan product. That is true here in this body and also in the other body.

Mr. Speaker, I ask support of the Members for this conference report.

The SPEAKER. Without objection, the previous question is ordered on the conference report.

There was no objection.

The SPEAKER. The question is on the conference report.

The conference report was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MONAGAN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the conference report just agreed to.

The SPEAKER. Is there objection to the request of the gentleman from Connecticut?

There was no objection.

MAKING IN ORDER CONSIDERATION OF H.R. 16705, FOREIGN ASSISTANCE APPROPRIATIONS, 1973

Mr. BOLLING. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1122 and ask for its immediate consideration.

The Clerk read the resolution as follows:

H. RES. 1122

Resolved, That upon the adoption of this resolution it shall be in order to move, clause 6 of Rule XXI to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 16705) making appropriations for Foreign Assistance and related programs for the fiscal year ending June 30, 1973, and for other purposes, and all points of order against said bill are hereby waived.

The SPEAKER. The gentleman from Missouri (Mr. BOLLING) is recognized for 1 hour.

Mr. BOLLING. Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. SMITH) pending which I yield myself such time as I may consume.

Mr. Speaker, this is an unusual rule. We in the Rules Committee have granted very few general waivers of points of order on bills in recent times. We have tried to specify what all the waivers were in detail.

On this bill there are so many points of order we are waiving that it would almost be a futility to try to list them. Almost everything in the appropriation bill is subject to a point of order for one reason or another, and the whole thing is subject to a point of order on the 3-day rule.

So I made the motion to waive all points of order, for the obvious reason that if we did not waive them all we would have a rule which might be longer than the bill.

The only justification for this—and I believe it is a very important justification—is that the provisions of the bill on which we have to have waivers include military assistance, aid to Bangladesh, and all kinds of things that have passed the House in a bill reported out by the Committee on Foreign Affairs and sent to the Senate, on which there has been no action.

The Senate in a very unusual procedure took up a bill. Then, in a most unusual of situations, people who for years have been for foreign aid and people who have become opponents of foreign aid defeated the bill. People who were strong supporters of the bill voted against it because of the provisions it contained with regard to ending the war in Vietnam.

Now, hopefully the Congress is moving toward a sine die adjournment. If there is to be a sine die adjournment this side of November or December, foreign aid is one of the things that is going to have to be acted on.

Now, the only alternative to acting on it in this fashion is to act on it with a continuing resolution, and I personally feel, as I believe most of the Members of the House feel, it would be better if we bit the bullet and tried to face the issue than passed legislation that did not acknowledge our inability to function as a total institution, as the Congress of the United States.

That is the justification for using this very unusual procedure to deal with this matter and send it to the other body so that once more the ball in a sense is in the other body's court.

Now, the reason for bringing it up today, in my judgment, is short of range, but still important. We are far enough along in the year so that there are a lot of people who have engagements of some importance to them in other places than in Washington, and the bringing up of the rule today—and we are just going to consider the rule—is so it will be more probable that the business of the week may be finished tomorrow. And with no apologies, I say this: This is a most unusual rule, a rule by which we waive points of order against everything under the sun, but this is the only way we can pursue the business of the House in a reasonably orderly fashion.

Mr. GROSS. Will the gentleman yield?

Mr. HALL. Will the gentleman yield?

Mr. BOLLING. I will be delighted to yield to either or both of my friends, the gentleman from Missouri, or the gentleman from Iowa.

Mr. GROSS. I cannot thank the gentleman from Missouri enough for yielding to me on this occasion.

To make a long story short, this is a most unusual rule on what always has been and still is a most unusual bill. This bill, if appropriated for in full, will mean that the taxpayers will cough up approximately another $2.7 billion to be dished out to foreigners who are already waiting with their tin cups ready around the world.

And so we are again confronted with what we usually are about this time of the year—an unusual rule making in order a bill to give away $2 to $3 billion of the American taxpayers' money to the spongers around the world. It is about that simple.

Would the gentleman from Missouri agree with me, at least in part?

Mr. BOLLING. I will agree with him on the fact it is unusual, and I will agree with him on the fact no one has been more consistent in his opposition to this kind of expenditure than the gentleman from Iowa has.

The only thing I would say in defense of the process, which I supported and do now support, is that a long line of Presidents, both Republican and Democratic, have felt very strongly about this subject, and a long line of Congresses with considerable pain have usually discovered a majority in support of these propositions, sometimes, I guess fairly regularly over the last 8 or 10 years, at a reduced level from the bill before us. I cannot even say that about this one, because I understand there will be a little bit more money spent this time than the last time if it is passed.

Mr. GROSS. Will the gentleman yield?

Mr. BOLLING. I yield to the gentleman from Iowa.

Mr. GROSS. And on behalf of those who have been voting for this annual multibillion-dollar foreign giveaway business through the years, I want to extend my sympathy to the taxpayers.

Mr. HALL. Will the gentleman yield?

Mr. BOLLING. I yield to the gentleman from Missouri.

Mr. HALL. I appreciate my nonapologetic colleague from Missouri yielding about his most apologetic remarks.

I just wonder if he would not join with me in the conclusion that an even quicker way to adjourn sine die would be to join with the other body and give this thing the decent burial that it deserves by voting down the rule waiving all points of order and changing again, as we just did on the previous consideration, the Reorganization Act of 1970 which the gentleman was so eminent in helping prepare.

Mr. BOLLING. I thank the gentleman for the last sentence, recognizing my interest in reorganization.

With regard to the rest of the statement, the only comment I can make would be that if we did not proceed in this fashion to a satisfactory conclusion and if we did not have the continuing resolution which kept this program going, I do not believe that this Congress could successfully adjourn permanently for this year. I say that because I am convinced the failure to have any foreign aid program would result in the President feeling that he had to call us back after the election if not earlier.

So I agree with the thrust of the gentleman's statement from his point of view, but I must say I do believe we must act on the matter, and this I believe is the more responsible way to act than by continuing resolution, to which we may come in the final analysis.

Mr. HALL. The question of responsibility is a matter of speculation for individual Members. Waiving all points of order takes away the elected individual Member's rights against nongermane bills or against appropriating committee reports that have not been authorized by the legislative committee, and it does damage, I think my distinguished friend will agree with me, to the orderly legislative process. Perhaps it is just as well to let this ball bounce in the court of the executive branch and put the onus on them for calling us back into session if this is all that important.

But be that as it may, I strongly hope that we would do even greater damage to this foreign aid giveaway. I yield to no one, even my friend from Iowa, in consistency in having voted against this at every opportunity I have had since I have been here, as I have voted against increaed debt ceilings and as I have voted against and will vote against a continuing resolution.

For the gentleman's information, I have already been approached today about this continuing resolution coming up next week and about extending the time beyond the middle of October. If this House does not want to dangle on the tenuous strings of the other body or the executive branch and assert its will as the representatives of the people, then I think it is time that we caught their attention by striking them between the eyes with a singletree, if necessary, in order to focus the attention of the American people on what is going on with their moneys.

Mr. GROSS. Will the gentleman again yield to me?

Mr. BOLLING. I am glad to yield to the gentleman.

Mr. GROSS. I cannot resist replying to my good friend from Missouri and his statement that he does not yield to me in his consistent opposition to the foreign handout programs. Let me say to him that I have about 24 years of voting against it and he still needs about 12 years to catch up.

Mr. HALL. Like the gentleman says, without qualms he can write songs.

Mr. BOLLING. I think I can say that any fair-minded observer can state that the gentleman from Iowa and the gentleman from Missouri are tied in their opposition.

Mr. LONG of Maryland. Will the gentleman yield to me?

Mr. BOLLING. I yield to the gentleman.

Mr. LONG of Maryland. I think the gentleman from Missouri is really a master of understatement when he said this bill was a little bit higher. It strikes me that you do not have to be against foreign aid to be worried about this bill, because it is $1 billion higher than last year. We have gone back over the last 16 years, and as far as we can find out, it is the highest foreign aid bill we have

rendered by District of Columbia substitute teachers for purposes of civil service retirement;

S. 2478. An act to provide for the disposition of funds to pay a judgment in favor of the Shoshone-Bannock Tribes of Indians of the Fort Hall Reservation, Idaho, as representatives of the Lemhi Tribe, in Indian Claims Commission docket numbered 326–I, and for other purposes; and

S. 2575. An act for the relief of William John West.

The message also announced that the House had agreed to the amendments of the Senate to the concurrent resolution (H. Con. Res. 550) providing for for the protection of the Capitol complex.

ENROLLED BILL PRESENTED

Later, the Secretary of the Senate reported that today, September 19, 1972, he had presented to the President of the United States the enrolled bill (S. 3442) to amend the Public Health Service Act to extend and revise the program of assistance under this Act for the control and prevention of communicable diseases.

APPOINTMENT BY THE VICE PRESIDENT

The PRESIDING OFFICER (Mr. FANNIN). The Chair, on behalf of the Vice President, appoints the following Senators as advisors to attend the 1972 Annual Meetings of the Board of Governors of the International Bank for Reconstruction and Development and the International Monetary Fund, Washington, D.C., September 25–29, 1972: Senators MCCLELLAN, FULBRIGHT, SPARKMAN, AIKEN, FONG, and TOWER; and the following Senators as observers to attend the same meetings: Senators HARRY F. BYRD, JR., and JAVITS.

RELIEF OF WILLIAM PHILLIPS

Mr. INOUYE. Mr. President, I submit a resolution and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 368), to refer the bill (S. 1418) entitled "A bill for the relief of William Phillips" to the Chief Commissioner of the United States Court of Claims for a report thereon.

Is there objection to the present consideration of the bill?

There being no objection, the resolution was considered and agreed to, as follows:

S. RES. 368

Resolved, That the bill (S. 1418) entitled "A bill for the relief of William Phillips", now pending in the Senate, together with all accompanying papers, is referred to the Chief Commissioner of the United States Court of Claims. The Chief Commissioner shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report thereon to the Senate at the earliest practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States, or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant.

FEDERAL-AID HIGHWAY ACT OF 1972

The PRESIDING OFFICER. Under the previous order, the Chair lays before the Senate S. 3939, which the clerk will state by title.

The legislative clerk read the bill by title, as follows:

A bill (S. 3939) to authorize appropriations for the construction of certain highways in accordance with title 23 of the United States Code, and for other purposes.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. RANDOLPH. Mr. President, I yield to the Senator from Pennsylvania (Mr. SCOTT).

RECORD NUMBER OF YEA-AND-NAY VOTES

Mr. SCOTT. If the Senator would yield to me 1 minute, I would observe that the last vote cast was the 425th vote this session, and the previous record, if we can call it that, for the number of votes cast in the Senate in a single year session was last year 423 and the year previous 421; so the Senate is busy and is engaged in a great deal of activity.

I thought that the passing of this record ought to be noted at this time. I couple it with a plea that we avoid, if possible, unnecessary rollcalls on uncontested matters wherever possible, so that we may get on with the work of the Senate.

FEDERAL ADVISORY COMMITTEE STANDARDS ACT—CONFERENCE REPORT

Mr. MUSKIE. Mr. President, on behalf of the junior Senator from Montana (Mr. METCALF), I submit a report of the committee of conference on H.R. 4383, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated by title.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of September 18, 1972, at pp. H8454–H8457.)

Mr. MUSKIE. Mr. President, this conference report is a balanced compromise between the Senate and House that will develop a workable and effective system for the creation and operation of Federal advisory committees.

It is the culmination of extensive hearings, investigations, and legislative consideration by members of the Government Operations Committees of both Houses.

On the Senate side, the legislation was handled by the distinguished Senator from Montana (Mr. METCALF), who did an outstanding job in conducting the hearings of the Subcommittee on Intergovernmental Relations and in guiding the legislation (S. 3529) through the committees and the Senate.

Senator METCALF has been strong and persistent in his effort to halt the proliferation of advisory committees, and to establish requirements for public access to committee meetings and records. The Senator's concern is best expressed in his own words at the subcommittee hearings:

What we are dealing with here, goes to the bedrock of government decisionmaking. Information is an important commodity in this capital.

Those who get information to policymakers, or get information for them, can benefit their causes, whatever it may be. Outsiders can be adversely and unknowingly affected. And decisionmakers who get information from special interest groups who are not subject to rebuttal because opposing interests do not know about the meetings—and could not get in the door if they did—may not make tempered judgments.

Mr. President, however, the effort to develop a Senate bill on advisory committees was bipartisan. We are indeed grateful for the able assistance provided by the senior Senator from Illinois (Mr. PERCY), the junior Senator from Delaware (Mr. ROTH), and the junior Senator from Tennessee (Mr. BROCK), each of whom played a major part in drafting the legislation and obtaining Senate approval.

On the House side, we are indebted to the very able Congressman from Connecticut (Mr. MONAGAN) for his leadership both in conducting an in-depth investigation of the advisory committee problem, and in sponsoring the legislation which received overwhelming House approval.

The conferees did their work well.

Although the Senate members were not able to convince their House colleagues on all points, they were able to reach agreement on a workable bill. Among other things, the legislation would:

(1) require Congress to make a continuing review of existing advisory committees to determine which should be abolished, merged or revised, and to follow certain guidelines in the creation of any new committees.

(2) require the OMB to institute a comprehensive review of advisory committees and recommend reorganization or abolishment of such committee to the President; to prescribe administrative guidelines and management controls; and to report annually to Congress on the activities, status, and costs of such committees.

(3) authorize the President to assign responsibility for evaluation and action on recommendations of Presidential advisory committees, and to report on the disposition of such recommendations.

(4) provide for uniform procedures in the establishment and conduct of advisory committees. These include the

filing of a committee charter, requirements of notice and public access to meetings and records, subject to certain exceptions, and the monitoring of such meetings by a Government employee.

(5) provide for the opportunity for advisory committee meetings to be closed where they deal with matters exempted from disclosure under the Freedom of Information Act; and

(6) provide for the termination of advisory committees after 2-year periods, subject to formal renewal under certain procedures.

On June 5, 1972, after the House had passed H.R. 4383, and after the Subcommittee on Intergovernmental Relations unanimously reported S. 3529, the President proclaimed new Executive Order 11671. This order contained to some degree concepts incorporated in the two pieces of legislation. I think it is most important to note that the Conferees considered the provisions of the Executive order in arriving at their agreement, and in fact included in the conference report some of its key provisions.

Mr. PERCY. Mr. President, will the Senator yield?

Mr. MUSKIE. I yield.

Mr. PERCY. Mr. President, I believe this conference report represents a fair balance between the House and Senate bills. The major area of compromise is section 10, setting forth requirements for opening up advisory committees to the public, and extending public access to their documents. The Senate bill provided guarantees that if meetings were closed because they dealt with matters of national security, business confidentiality, or other matters provided for in the exemptions section of the Freedom of Information Act—section 552(b) of title V of the United States Code, transcripts must be taken. The House bill did not contain such provisions. The conference report accepts the principle that advisory committee meetings should be open, and that documents associated with advisory committees should be available to the public or request. Under the conference version, however, meetings can be closed to the public, and documents can be withheld, under the exemptions in the Freedom of Information Act. In cases where meetings are closed, the President or agency head who closes them must say why. Another requirement is that detailed minutes be kept of each meeting, but these are not available to the public in cases where meetings are required to be closed.

Otherwise, the bill continues to contain provisions regulating the cost, establishment, and termination of the over 1,000 Federal advisory committees that are now estimated to exist at a cost of over $70 million. It is an innovative, important bill that will create order out of the chaotic situation that now exists. I wholeheartedly recommend adoption of the conference report.

Mr. President, I have only one point upon which I would very much appreciate a clarification by the distinguished manager of the bill.

I would like to say I think this is the Government Operations Committee at its best. We have an oversight responsibility, where 1,800 of these advisory commissions and committees are in existence, at a cost of $75 million. I think, by putting them under control, we have a strong management bill before us.

I ask the distinguished Senator from Maine this question: I note that the only standard contained in the bill regarding membership of advisory committees is the provision in section 5(b)(2) requiring the Congress, in creating new advisory committees, to insure that the membership of such committees be "fairly balanced in terms of the points of view represented and the function to be performed by the advisory committee." As I understand it, there is no limitation on those who may be appointed to be members, including the executives of associations of businessmen or other groups. Indeed, I would infer that the purpose of section 5(c) is to further insure that all advisory committees, whether created by statute, by the President, or by an agency head, are broadly representative.

I would ask the distinguished chairman of the Subcommittee on Intergovernmental Relations (Mr. MUSKIE): Is there anything in the bill that might be construed to limit executives of trade associations from participation in or membership on Federal advisory committees regulated by this act?

Mr. MUSKIE. No; I know of nothing in this bill to that effect. I would hope, of course, that they would not be given a disproportionate influence or role in these committees, but I know of no restriction.

Mr. PERCY. I very much appreciate this observation by the distinguished Senator. This point is of interest to the Senator from Tennessee (Mr. BROCK), who regrets that he could not be here today.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

ORDER OF BUSINESS

Mr. RANDOLPH. Mr. President, I yield to the distinguished Senator from Montana.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate may proceed to the immediate consideration of Calendar Nos. 1070, 1075, and 1092.

THE PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT OF THE RAILROAD RETIREMENT ACT OF 1937

The Senate proceeded to consider the bill (H.R. 15927) to amend the Railroad Retirement Act of 1937 to provide a temporary 20 per centum increase in annuities, and for other purposes which had been reported from the Committee on Labor and Public Welfare with an amendment to strike out all after the enacting clause and insert:

That (a) section 3(a) of the Railroad Retirement Act of 1937 is amended by inserting at the end thereof the following new paragraph:

"(5) The individual's annuity computed under the preceding provisions of this subsection and that part of subsection (e) of this section which precedes the first proviso shall be increased by 20 per centum.".

(b) Section 2(e) of such Act is amended—

(1) by striking out "section 3(a) (3) or (4) of this Act" and inserting in lieu thereof "section 3(a) (3), (4), or (5) of this Act";

(2) by striking out the second sentence of the last paragraph; and

(3) by adding at the end thereof the following new paragraph:

"The spouse's annuity computed under the other provisions of this section shall (before any reduction on account of age) be increased by 20 per centum. The preceding sentence and the other provisions of this subsection shall not operate to increase the spouse's annuity (before any reduction on account of age) to an amount in excess of the maximum amount of a spouse's annuity as provided in the first sentence of this subsection. This paragraph shall be disregarded in the application of the preceding two paragraphs."

(c) Section 2(i) of such Act is amended by striking out "the last two paragraphs" and inserting in lieu thereof "the last paragraph plus the two preceding paragraphs".

(d) Section 3(e) of such Act is amended—

(1) by striking out the word "and" after clause (iv) in the second paragraph thereof and inserting after the semicolon in clause (v) in such second paragraph the following new clauses:

"(vi) individuals not entitled to an annuity under section 2 or 5 of this Act shall not be included in the computation under such first proviso except a spouse who could qualify for an annuity under section 2(e) or (h) of this Act if the employee from whom the spouse's annuity under this Act would derive had attained age sixty-five, and such employee's children who meet the definition as such contained in section 216(e) of the Social Security Act; (vii) after an annuity has been certified for payment and such first proviso was inapplicable after allowing for any waiting period under section 223(c)(2) of the Social Security Act, and after having considered the inclusion of all persons who were then eligible for inclusion in the computation under such first proviso, or was then applicable but later became inapplicable, any recertification in such annuity under such first proviso shall not take into account individuals not entitled to an annuity under section 2 or 5 of this Act except a spouse who could qualify for an annuity under section 2(h) of this Act when she attains age sixty-two if the employee from whom the spouse's annuity would derive had attained age sixty-five, and who was married to such employee at the time he applied for the employee annuity; (viii) in computing the amount to be paid under such first proviso, the only benefits under title II of the Social Security Act which shall be considered shall be those to which the individuals included in the computation are entitled; (ix) the average monthly wage for an employee during his lifetime shall include (A) only his wages and self-employment income creditable under the Social Security Act through the later of December 31, 1971, or December 31 of the year preceding the year in which his annuity began to accrue, and (B) his compensation up to the date his annuity began to accrue; and (x) in computing the average monthly wage in clause (ix) above, section 215(b)(2)(C)(ii) of the Social Security Act shall, solely for the purpose of including compensation up to the date the employee's annuity began to accrue, be deemed to read as follows: 'the year succeeding the year in which he died or retired'; and

(2) by striking out in the third paragraph thereof ", or on application, would be".

(e) Section 5(l)(1) of such Act is amended by striking out from the first sentence thereof "and (g)" and inserting in lieu thereof "(g), and (k)".

age could possibly be considered a conflict of interest, but a conflict of interest that is worthy of the highest commendation, because much of the community improvement and community aspirations about which they wrote were of their own doing—a great merger of talents from which everyone benefited.

The Paris News will, of course, continue to prosper as a splendid paper—because of the constant generation-long input of these gentlemen, and because they built their paper so remarkably well.

It is, of course, only to be expected that Walter Bassano will now devote all of his energies without any time out—since there is no vacation in retirement—to his ever-expanding vision of a perfect environment, like the Pat Mayse Reservoir, whose creation over the past 20 years has been one of his most notable achievements. And it can come as no surprise to anyone if Bill Thompson from his vantage point in Dallas is found to be still working to enhance even further the amenities of daily living in the city of Paris and Lamar County—where I suspect he too will choose to retire, when the time comes, in the heart of the Great Gulf Southwest.

It is often noticed that men of superior achievement are blessed with wonderful families. Certainly Mrs. Walter Bassano and her good friend, Mrs. Bill Thompson—known as Georgia B and Jo Ann—are among the most distinguished, charming and gracious of our great Southern ladies. In the world of today, where newspapers often carry nerve-jarring stories, it is indeed a welcome task to salute these two Texas gentlemen, their wives, and families, and to honor their constructive accomplishments; they have done more than their share to bring about those objectives set forth in the Preamble to the U.S. Constitution: to "insure domestic Tranquility * * * (and) promote the general Welfare."

APPOINTMENT OF CONFEREES ON H.R. 10243, TO ESTABLISH AN OFFICE OF TECHNOLOGY ASSESSMENT

Mr. MILLER of California. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 10243) to establish an Office of Technology Assessment for the Congress as an aid in the identification and consideration of existing and probable impacts of technological application; to amend the National Science Foundation Act of 1950; and for other purposes, with Senate amendments thereto, disagree to the Senate amendments, and request a conference with the Senate thereon.

The SPEAKER. Is there objection to the request of the gentleman from California? The Chair hears none, and appoints the following conferees: Messrs. MILLER of California, DAVIS of Georgia, CABELL, MOSHER, and ESCH.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 4383, FEDERAL ADVISORY COMMITTEE STANDARDS ACT

Mr. HORTON. Mr. Speaker, I ask unanimous consent that the conferees on H.R. 4383, Federal Advisory Committee Standards Act, may have until midnight tonight to file a conference report.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

CONFERENCE REPORT (H. REPT. No. 92-1403)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows: In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Federal Advisory Committee Act".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and diverse opinions to the Federal Government.

(b) The Congress further finds and declares that—

(1) the need for many existing advisory committees has not been adequately reviewed;

(2) new advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

(3) advisory committees should be terminated when they are no longer carrying out the purposes for which they were established;

(4) standards and uniform procedures should govern the establishment, operation, administration, and duration of advisory committees;

(5) the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees; and

(6) the function of advisory committees should be advisory only, and that all matters under their consideration should be determined, in accordance with law, by the official, agency, or officer involved.

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term "Director" means the Director of the Office of Management and Budget.

(2) The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is—

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) the Advisory Commission on Intergovernmental Relations, (ii) the Commission on Government Procurement, and (iii) any committee which is composed wholly of full-time officers or employees of the Federal Government.

(3) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

(4) The term "Presidential advisory committee" means an advisory committee which advises the President.

APPLICABILITY

SEC. 4. (a) The provisions of this Act or of any rule, order, or regulation promulgated under this Act shall apply to each advisory committee except to the extent that any Act of Congress establishing any such advisory committee specifically provides otherwise.

(b) Nothing in this Act shall be construed to apply to any advisory committee established or utilized by—

(1) the Central Intelligence Agency; or

(2) the Federal Reserve System.

(c) Nothing in this Act shall be construed to apply to any local civic group whose primary function is that of rendering a public service with respect to a Federal program, or any State or local committee, council, board, commission, or similar group established to advise or make recommendations to State or local officials or agencies.

RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

SEC. 5. (a) In the exercise of its legislative review function, each standing committee of the Senate and the House of Representatives shall make a continuing review of the activities of each advisory committee under its jurisdiction to determine whether such advisory committee should be abolished or merged with any other advisory committee, whether the responsibilities of such advisory committee should be revised, and whether such advisory committee performs a necessary function not already being performed. Each such standing committee shall take appropriate action to obtain the enactment of legislation necessary to carry out the purpose of this subsection.

(b) In considering legislation establishing, or authorizing the establishment of any advisory committee, each standing committee of the Senate and of the House of Representatives shall determine, and report such determination to the Senate or to the House of Representatives, as the case may be, whether the functions of the proposed advisory committee are being or could be performed by one or more agencies or by an advisory committee already in existence, or by enlarging the mandate of an existing advisory committee. Any such legislation shall—

(1) contain a clearly defined purpose for the advisory committee;

(2) require the membership of the advisory committee to be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee;

(3) contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee's independent judgment;

(4) contain provisions dealing with authorization of appropriations, the date for submission of reports (if any), the duration of the advisory committee, and the publication of reports and other materials, to the extent that the standing committee determines the provisions of section 10 of this Act to be inadequate; and

(5) contain provisions which will assure that the advisory committee will have adequate staff (either supplied by an agency or employed by it), will be provided adequate quarters, and will have funds available to meet its other necessary expenses.

(c) To the extent they are applicable, the guidelines set out in subsection (b) of this section shall be followed by the President, agency heads, or other Federal officials in creating an advisory committee.

savings account holders began almost immediately with much of the paperwork and redtape being bypassed.

Mr. Speaker, when the legislation was passed, those of us who sponsored it knew there would be a variety of reasons why credit unions would be closed; but certainly we did not foresee that a disaster such as the magnitude of Agnes would provide such a major test for the insurance. The disaster does point up, however, the effectiveness of the insurance and speed with which claims can be paid.

In summary, I can only wonder what might have happened had the Blue Ribbon Cake Federal Credit Union not had such insurance. The August 13 edition of the Times-Leader, Evening News, Record of Wilkes-Barre carried an outstanding story describing the closing of the Blue Ribbon Cake Federal Credit Union and the payout from the National Credit Union Administration insurance fund. After reading the article, it can clearly be seen that the Federal share insurance legislation has truly been a noteworthy act of the Congress.

The article follows:

MEMBERS OF "A VERY GOOD CREDIT UNION" SUNK BY "AGNES" RECOVER FULLY

The National Credit Union Association, an agency of the Federal government, is expected to expend approximately $188,000 from its insurance fund to satisfy claims from members of the Blue Ribbon Cake Federal Credit Union who were hit both by the flood and by Interstate Brands Corporation's decision to close its Kingston plant.

Joseph Bellenghi, Harrisburg-based director for the NCUA's five-state region which includes the Wyoming Valley area, said the estimated $188,000 payout from the agency's insurance fund will be over and above the liquid assets of the now insolvent Blue Ribbon Cake Federal Credit Union.

The credit union became insolvent, he reported, because members hard-hit by the flood and now out of work because of the plant 's closing are unable to pay their loans. Before the flood hit and the plant closed, Bellenghi stated, the Blue Ribbon Cake Federal Credit Union was solvent and "a very good credit union."

Statitical information shows that the Blue Ribbon Cake Federal Credit Union had a total of $506,902 in 720 savings accounts, including 544 regular savings accounts and 176 Christmas accounts. Average savings per member were $932 or well above the national average which, according to NCUA officials, is "just under $600."

The credit union had a total of 292 loans amounting to $355,196. Total assets of the credit union were listed as $536,632.

INVOLUNTARY LIQUIDATION

Bellenghi said the Blue Ribbon Cake Federal Credit Union was placed into involuntary liquidation by NCUA Administrator Herman Nickerson, Jr., on August 4 when Interstate Brands Corporation announced the closing of the Kingston plant. The credit union's board of directors concurred with the NCUA administrator's action.

Notices of liquidation were prepared by the NCUA local staff, working out of the agency's offices at 361 Wyoming Avenue, Kingston, and claim forms were mailed to approximately 95 percent of the credit union's members by Monday. However, since some of the members had been displaced by the flood and forced to relocate, the NCUA staffers decided to "hand carry" some of the claim forms to the members.

In addition, to expedite payment of claims to members of the credit union—some of whom are in need of ready cash because of the circumstances—the local NCUA representatives have also made provision for immediate handling of the completed claim forms in Washington, D.C., where checks will be processed through the U.S. Treasury Department. These checks which, in some instances represent all or most of the savings accrued by individuals over the years, will then be "hand carried" to the individual savings account holders.

The first four checks were delivered Friday morning to credit union members who had completed their claim forms on Tuesday afternoon. Mr. Bellenghi said the claims forms had been "walked through" the various procesing steps at the direction of Administrator Nickerson. All of the claims from Blue Ribbon Cake Federal Credit Union members will receive this same "walk through service, he reported, and it is expected all checks will be delivered to the credit union members in about a week. Bellenghi said the Treasury was giving its full cooperation to the project and noted, too, that the checks are being hand-carried to the Wyoming Valley area just as soon as they are issued.

Recipients of the first four checks are:

Edward Wilk, 23 E. Hoyt St., Kingston, who is currently residing in a HUD mobile home set up in the back yard of his brother's residence at 942 W. Main St., Plymouth Twp. Mr. Wilk, who had completed 35 years of service with Blue Ribbon on June 3, said he and his wife had lost "everything" from their Kingston home and that they were not planning to return there. The money savings in the credit union, Mr. Wilk said, was accumulated at a rate of $2 per week and represented the bulk of the couple's savings.

Mrs. Helen Piesko, 73 N. Gates Ave., Kingston, who has been employed as a finisher-packer at the Blue Ribbon plant and who had been a member of the credit union for about 20 years. Both she and her husband, Paul, are out of work as a result of the flood and plant closing. Mr. Pesko had been employed by Marvel Kitchens, Inc., Wyoming. The couple estimated flood damage to their dwelling at upwards of $30,000.

Mrs. Mary Louise Broody, 104 Barney St., Wilkes-Barre, who had completed almost four years with Blue Ribbon and was employed as a carton packer. She, too, said that most of the family's savings were represented by the money in the credit union. She and her husband, Paul, along with two sons, Michael and John, Jr., are residing in a camper-type unit pending repair of the family home which was inundated almost to the second floor by flood water.

Miss Elizabeth Ducey, 50, N. Gates Ave., Kingston, who was employed as a wrapping machine operator at Blue Ribbon before the flood hit. Miss Ducey, the daughter of Mr. and Mrs. James Ducey, is to be wed next month to a former co-worker, Jerry Rozanski of 109 Center St., Kingston. The couple has had to schedule their wedding for St. Therese's Church, Shavertown, since their own churches in Kingston were devastated by the flood.

ACCOUNT'S INSURED

It was pointed out that members' accounts in the credit union are insured by the administrator up to a maximum of $20,000. While none of those in the Blue Ribbon Cake Federal Credit Union were in this maximum insured amount, it was stated that there were some savings accounts in the neighborhood of $15,000.

Members not personally contacted by the NCUA representatives were instructed to mail their completed claim forms to the National Credit Union Administration, Washington, D.C. 20456, for immediate processing.

Regarding the loans still outstanding, NCUA officials said these would be handled in various ways, dependent on the circumstances as noted, the loans may be written off. Other cases may involve sale of the outstanding loans to other credit unions.

Bellenghi said the flooding caused by Tropical Storm Agnes was the worst single disaster ever to hit credit unions. Although the Blue Ribbon Federal Credit Union was the only one to close down, there were 21 credit unions in the Wyoming Valley hit by the flooding.

The job of reconstructing these credit unions, the NCUA regional director reported, was complicated by the fact that in many cases the flood not only "wiped out" the credit union itself, but also the plants which employed the credit union members and the members themselves.

Pennsylvania leads all other States in the nation in numbers of credit unions, Bellenghi declared. He noted that Wyoming Valley area was hardest-hit by the disaster. Richmond, Va., where five credit unions were "under water" was the second hardest-hit area in Bellenghi's five-state region.

The first contacts in this area with flood-affected credit unions were made on the Tuesday after the flood, it was stated. In many cases, local NCUA representatives, including Francis Muto, the agency's examiner in the Wyoming Valley area, assisted in pulling credit unions records from flood-affected offices. A short time later, with an assist from the office of Congressman Daniel J. Flood of Wilkes-Barre, the NCUA established a temporary office at the Mackin School, city, to assist in reconstruction of the affected credit unions.

Foster Bryan of the NCUA's Washington, D.C., office has been named by the agency's administration to serve as agent for the liquidating of the Blue Ribbon Cake Federal Credit Union.

WALTER BASSANO AND BILL THOMPSON, JOURNALISTS WHO MADE HISTORY—IN WORD AND DEED

(Mr. PATMAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PATMAN. Mr. Speaker, for a considerable period of time the well-being, progress, and development of a large part of northeast Texas have been closely related to the parallel growth, circulation, and influence of a great daily and Sunday newspaper, the Paris News. This was accomplished under the forceful and inspiring leadership of its publisher, the Honorable Walter W. Bassano, ably assisted by his editor, Bill Thompson, and an outstanding staff of professional craftsmen and all those experts and knowledgeable people who have a hand in turning out a real good newspaper—7 days a week.

Now that Walter Bassano has come to the age of retirement, and Bill Thompson has finally yielded to the inducement of a prestigious position in the Dallas office of one of Texas' largest firms, it is high time to recognize that a glowing chapter of American history has been written and recorded by these two great journalists—Walter Bassano, imaginative, innovative, far-seeing, and creative, and Bill Thompson, consummate artisan of the printed word, student of human nature in all its phases, and always an efficient spokesman for good causes. Such massive journalistic cover-

RESPONSIBILITIES OF THE PRESIDENT

SEC. 6. (a) The President may delegate responsibility for evaluating and taking action, where appropriate, with respect to all public recommendations made to him by Presidential advisory committees.

(b) Within one year after a Presidential advisory committee has submitted a public report to the President, the President or his delegate shall make a report to the Congress stating either his proposals for action or his reasons for inaction, with respect to the recommendations contained in the public report.

(c) The President shall, not later than March 31 of each calendar year (after the year in which this Act is enacted), make an annual report to the Congress on the activities, status, and changes in the composition of advisory committees in existence during the preceding calendar year. The report shall contain the name of every advisory committee, the date of and authority for its creation, its termination date or the date it is to make a report, its functions, a reference to the reports it has submitted, a statement of whether it is an ad hoc or continuing body, the dates of its meetings, the names and occupations of its current members, and the total estimated annual cost to the United States to fund, service, supply, and maintain such committee. Such report shall include a list of those advisory committees abolished by the President, and in the case of advisory committees established by statute, a list of those advisory committees which the President recommends be abolished together with his reasons therefor. The President shall exclude from this report any information which, in his judgment, should be withheld for reasons of national security, and he shall include in such report a statement that such information is excluded.

RESPONSIBILITIES OF THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

SEC. 7. (a) The Director shall establish and maintain within the Office of Management and Budget a Committee Management Secretariat, which shall be responsible for all matters relating to advisory committees.

(b) The Director shall, immediately after the enactment of this Act, institute a comprehensive review of the activities and responsibilities of each advisory committee to determine—

(1) whether such committee is carrying out its purpose;

(2) whether, consistent with the provisions of applicable statutes, the responsibilities assigned to it should be revised;

(3) whether it should be merged with other advisory committees; or

(4) whether it should be abolished.

The Director may from time to time request such information as he deems necessary to carry out his functions under this subsection. Upon the completion of the Director's review he shall make recommendations to the President and to either the agency head or the Congress with respect to action he believes should be taken. Thereafter, the Director shall carry out a similar review annually. Agency heads shall cooperate with the Director in making the reviews required by this subsection.

(c) The Director shall prescribe administrative guidelines and management controls applicable to advisory committees, and, to the maximum extent feasible, provide advice, assistance, and guidance to advisory committees to improve their performance. In carrying out his functions under this subsection, the Director shall consider the recommendations of each agency head with respect to means of improving the performance of advisory committees whose duties are related to such agency.

(d) (1) The Director, after study and consultation with the Civil Service Commission, shall establish guidelines with respect to uniform fair rates of pay for comparable services of members, staffs, and consultants of advisory committees in a manner which gives appropriate recognition to the responsibilities and qualifications required and other relevant factors. Such regulations shall provide that—

(A) no member of any advisory committee or of the staff of any advisory committee shall receive compensation at a rate in excess of the rate specified for GS–18 of the General Schedule under section 5332 of title 5, United States Code; and

(B) such members, while engaged in the performance of their duties away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

(2) Nothing in this subsection shall prevent—

(A) an individual who (without regard to his service with an advisory committee) is a full-time employee of the United States, or

(B) an individual who immediately before his service with any advisory committee was such an employee,

from receiving compensation at the rate at which he otherwise would be compensated (or was compensated) as a full-time employee of the United States.

(e) The Director shall include in budget recommendations a summary of the amounts he deems necessary for the expenses of advisory committees, including the expenses for publication of reports where appropriate.

RESPONSIBILITIES OF AGENCY HEADS

SEC. 8. (a) Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Director under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.

(b) The head of each agency which has an advisory committee shall designate an Advisory Committee Management Officer who shall—

(1) exercise control and supervision over the establishment, procedures, and accomplishments of advisory committees established by that agency;

(2) assemble and maintain the reports, records, and other papers of any such committee during its existence; and

(3) carry out, on behalf of that agency, the provisions of section 552 of title 5, United States Code, with respect to such reports, records, and other papers.

ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

SEC. 9. (a) No advisory committee shall be established unless such establishment is—

(1) specifically authorized by statute or by the President; or

(2) determined as a matter of formal record, by the head of the agency involved after consultation with the Director, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.

(b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendaitons shall be made solely by the President or an officer of the Federal Government.

(c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with (1) the Director in the case of Presidential advisory committees, or (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:

(A) the committee's official designation;

(B) the committee's objectives and the scope of its activity;

(C) the period of time necessary for the committee to carry out its purposes;

(D) the agency or official to whom the committee reports;

(E) the agency responsible for providing the necessary support for the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

ADVISORY COMMITTEE PROCEDURES

SEC. 10. (a) (1) Each advisory committee meeting shall be open to the public.

(2) Except when the President determines otherwise for reasons of national security, timely notice of each such meeting shall be published in the Federal Register, and the Director shall prescribe regulations to provide for other types of public notice to insure that all interested persons are notified of such meeting prior thereto.

(3) Interested persons shall be permitted to attend, appear before, or file statements with any advisory committee, subject to such reasonable rules or regulations as the Director may prescribe.

(b) Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

(c) Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee. The accuracy of all minutes shall be certified to by the chairman of the advisory committee.

(d) Subsections (a)(1) and (a)(3) of this section shall not apply to any advisory committee meeting which the President, or the head of the agency to which the advisory committee reports, determines is concerned with matters listed in section 552(b) of title 5, United States Code. Any such determination shall be in writing and shall contain the reasons for such determination. If such a determination is made, the advisory committee shall issue a report at least annually setting forth a summary of its activities and such related matters as would be informative to the public consistent with the policy of section 552(b) of title 5, United States Code.

(e) There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory commit-

tee shall conduct any meeting in the absence of that officer or employee.

(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee.

AVAILABILITY OF TRANSCRIPTS

SEC. 11. (a) Except where prohibited by contractual agreements entered into prior to the effective date of this Act, agencies and advisory committees shall make available to any person, at actual cost of duplication, copies of transcripts of agency proceedings or advisory committee meetings.

(b) As used in this section "agency proceeding" means any proceeding as defined in section 551(12) of title 5, United States Code.

FISCAL AND ADMINISTRATIVE PROVISIONS

SEC. 12. (a) Each agency shall keep records as will fully disclose the disposition of any funds which may be at the disposal of its advisory committees and the nature and extent of their activities. The General Services Administration, or such other agency as the President may designate, shall maintain financial records with respect to Presidential advisory committees. The Comptroller General of the United States, or any of his authorized representatives, shall have access, for the purposes of audit and examination, to any such records.

(b) Each agency shall be responsible for providing support services for each advisory committee established by or reporting to it unless the establishing authority provides otherwise. Where any such advisory committee reports to more than one agency, only one agency shall be responsible for support services at any one time. In the case of Presidential advisory committees, such services may be provided by the General Services Administration.

RESPONSIBILITIES OF LIBRARY OF CONGRESS

SEC. 13. Subject to section 552 of title 5, United States Code, the Director shall provide for the filing with the Library of Congress of at least eight copies of each report made by every advisory committee and, where appropriate, background papers prepared by consultants. The Librarian of Congress shall establish a depository for such reports and papers where they shall be available to public inspection and use.

TERMINATION OF ADVISORY COMMITTEES

SEC. 14. (a)(1) Each advisory committee which is in existence on the effective date of this Act shall terminate not later than the expiration of the two-year period following such effective date unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government, such advisory committee is renewed by the President or that officer by appropriate action prior to the expiration of such two-year period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(2) Each advisory committee established after such effective date shall terminate not later than the expiration of the two-year period beginning on the date of its establishment unless—

(A) in the case of an advisory committee established by the President or an officer of the Federal Government such advisory committee is renewed by the President or such officer by appropriate action prior to the end of such period; or

(B) in the case of an advisory committee established by an Act of Congress, its duration is otherwise provided for by law.

(b)(1) Upon the renewal of any advisory committee, such advisory committee shall file a charter in accordance with section 9(c).

(2) Any advisory committee established by an Act of Congress shall file a charter in accordance with such section upon the expiration of each successive two-year period following the date of enactment of the Act establishing such advisory committee.

(3) No advisory committee required under this subsection to file a charter shall take any action (other than preparation and filing of such charter) prior to the date on which such charter is filed.

(c) Any advisory committee which is renewed by the President or any officer of the Federal Government may be continued only for successive two-year periods by appropriate action taken by the President or such officer prior to the date on which such advisory committee would otherwise terminate.

EFFECTIVE DATE

SEC. 15. Except as provided in section 7(b), this Act shall become effective upon the expiration of ninety days following the date of enactment.

And the Senate agree to the same.

CHET HOLIFIELD,
JOHN S. MONAGAN,
DANTE B. FASCELL,
SAM STEIGER,
GARRY BROWN,
Managers on the Part of the House.

EDMUND S. MUSKIE,
HUBERT H. HUMPHREY,
LAWTON CHILES,
LEE METCALF,
CHARLES PERCY,
W. V. ROTH, Jr.,
BILL BROCK,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4383) to authorize the establishment of a system governing the creation and operation of advisory committees in the executive branch of the Federal Government, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

1. SHORT TITLE

The Senate amendment changed the short title of the House bill to the "Federal Advisory Committee Act". The conference substitute conforms to the Senate amendment.

2. FINDINGS AND PURPOSES

The Senate amendment contained a more lengthy statement of findings and purposes than did the House bill, but did not differ substantially from the House bill. The conference substitute adopts a compromise between the two provisions.

3. DEFINITIONS

The Senate amendment contained definitions of "agency advisory committee", "Presidential advisory committee", and "advisory committee", while the House bill contained definitions of "advisory committee" and "Presidential advisory committee".

The conference substitute adopts the House definition of "Presidential advisory committee" without any change and adopts the House definition of "advisory committee" with modification.

The conference substitute definition of "advisory committee" includes committees which are established or utilized by the President or by one or more agencies or officers of the Federal Government. The conference substitute excludes from the definition of "advisory committee" the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, and any committee which is composed wholly of full-time officers or employees of the Federal Government.

The conference substitute deletes the Senate amendment definitions of "officer" and "employee".

4. APPLICABILITY OF THE PROVISIONS OF THE ACT

The Senate amendment contained a provision setting forth the applicability of provisions of the Act, while the House bill contained no comparable provision. The conference substitute adopts the language of the Senate amendment with modifications. The conference substitute specifically exempts from the applicability of the provisions of the Act any advisory committee established or utilized by the Central Intelligence Agency or by the Federal Reserve System.

The Act does not apply to persons or organizations which have contractual relationships with Federal agencies nor to advisory committees not directly established by or for such agencies.

5. RESPONSIBILITIES OF CONGRESSIONAL COMMITTEES

The Senate amendment and the House bill contained minor differences regarding the legislative review functions of the standing committees of Congress. The conference substitute adopts the language of the Senate amendment.

The Senate amendment and the House bill differed regarding the duties of the standing committees of Congress when considering legislation establishing advisory committees. The conference substitute adopts the House bill with minor modifications.

The House bill provides that when the President, any agency head, or any other Federal official establishes an advisory committee, he shall follow the guidelines which are set forth in the House bill for standing committees of the Congress when they are considering legislation establishing advisory committees. The Senate amendment contained no comparable provision. The conference substitute adopts the House bill.

6. RESPONSIBILITIES OF THE PRESIDENT

The Senate amendment and the House bill differed with respect to the responsibilities of the President. The conference substitute adopts a compromise provision which provides that the President may delegate responsibility for evaluating and taking action with respect to the public recommendations of Presidential advisory committees. The conference substitute further provides that the President or his delegate shall submit a report to Congress stating his proposals for action or his reasons for inaction with respect to such public recommendations.

The House bill required the President to make an annual report to Congress regarding advisory committees. The Senate amendment required the Director of the Office of Management and Budget to make a similar annual report. The conference substitute adopts the House bill with modifications. The modifications include the adoption of a provision similar to a provision contained in the Senate amendment excluding from such annual report information which should be withheld for reasons of national security.

7. RESPONSIBILITIES OF THE DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

The Senate amendment contained several differences from the House bill with respect to the responsibilities of the Director of the Office of Management and Budget.

As noted above, the Senate amendment required the Director to make an annual report to Congress on advisory committees. The conference substitute provides that the President shall make such annual reports, as did the House bill.

With respect to the other duties of the Director, the conference substitute adopts the language of the Senate amendment with slight modification.

The conference substitute requires the Director to include in budget recommendations a summary of amounts necessary for the expenses of advisory committees.

8. RESPONSIBILITIES OF AGENCY HEADS

The Senate amendment differed from the House bill in that it provided that each agency head should designate an Advisory Committee Management Officer with specified duties, and the House bill contained no comparable provision. The conference substitute adopts the Senate amendment with slight modifications.

9. ESTABLISHMENT AND PURPOSE OF ADVISORY COMMITTEES

The Senate amendment set forth a procedure to be followed when advisory committees are established and provided that advisory committees be utilized solely for advisory functions. The House bill had no comparable provision. The conference substitute adopts the Senate amendment with modifications.

10. ADVISORY COMMITTEE PROCEDURES

With regard to the availability of the records and other papers of advisory committees and public access to their meetings, the Senate amendment differed from the House bill.

The conference substitute provides for publication in the Federal Register of timely notice of advisory committee meetings, except where the President determines otherwise for reasons of national security. The conference substitute further provides for public access to advisory committee meetings subject to restrictions which may be imposed by the President or the head of any agency to which an advisory committee reports. Such restrictions may be imposed after it is determined that an advisory committee meeting is concerned with matters listed in section 552(b) of title 5, United States Code. The conference substitute also provides that subject to section 552 of title 5, United States Code, the records and other papers of advisory committees shall be available for public inspection and copying.

The conference substitute requires that each advisory committee keep detailed minutes of its meetings.

The conference substitute requires that a designated officer or employee of the Government attend each advisory committee meeting. No such meeting may be conducted in his absence or without his approval. Except in the case of Presidential advisory committees the agenda of such meeting must be approved by him.

11. AVAILABILITY OF TRANSCRIPTS

The Senate amendment provided that agencies and advisory committees should make any transcripts of their proceedings or meetings available to the public at actual cost of duplication. The House bill contained no comparable provision. The conference substitute adopts the Senate amendment with modification.

12. COLLECTION OF INFORMATION

The Senate amendment contained a provision relating to procedures followed by the Office of Management and Budget in carrying out its duties under the Federal Reports Act. The House bill contained no such provision.

The conference substitute contains no provision on this subject.

13. FISCAL AND ADMINISTRATIVE PROVISIONS

The Senate amendment and the House bill differ slightly regarding the requirement that records be kept concerning the disposition of funds and the nature and extent of activities of advisory committees. The conference substitute provides that each agency shall keep financial and other records regarding the advisory committees under its jurisdiction and that either the General Services Administration or such agency as the President may designate shall maintain financial records of Presidential advisory committees.

The conference substitute adopts the provision of the Senate amendment concerning support services for advisory committees.

14. RESPONSIBILITIES OF THE LIBRARY OF CONGRESS

The Senate amendment and the House bill differed with respect to the responsibilities of the Library of Congress as a depository of the reports and other materials of advisory committees. The conference substitute adopts the House bill with modifications.

15. TERMINATION OF ADVISORY COMMITTEES

The Senate amendment differed from the House bill in that it provided for the termination of advisory committees created by Act of Congress before the effective date of the bill and further differed in that it provided for the termination of all advisory committees not later than December 31, 1973. The House bill provided for the termination of all advisory committees, other than those created by Act of Congress before the date of enactment of the bill, within two years after the effective date of the bill.

The conference substitute adopts the Senate amendment with modifications. An important modification to the Senate amendment is the substitution of a termination date which occurs two years after the effective date of the bill.

16. EFFECTIVE DATE

The Senate amendment and the House bill differed slightly with respect to effective date. The conference substitute adopts the Senate amendment with modifications.

CHET HOLIFIELD,
JOHN S. MONAGAN,
DANTE B. FASCELL,
SAM STEIGER,
GARRY BROWN,
Managers on the part of the House.

EDMUND S. MUSKIE,
HUBERT H. HUMPHREY,
LAWTON CHILES,
LEE METCALF,
CHARLES PERCY,
W. V. ROTH, JR.,
BILL BROCK,
Managers on the part of the Senate.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. FORSYTHE) and to include extraneous matter:)

Mr. STEIGER of Wisconsin in two instances.
Mr. GUBSER.
Mr. SCHWENGEL.
Mr. CONTE.
Mr. MILLER of Ohio.
Mr. MINSHALL in two instances.
Mr. SPRINGER in four instances.
Mr. HOSMER in two instances.
Mr. ERLENBORN.
Mr. STEIGER of Arizona.

(The following Members (at the request of Mr. MITCHELL) and to include extraneous matter:)

Mr. VAN DEERLIN.
Mr. PEPPER.
Mrs. GRIFFITHS.
Mr. STOKES in two instances.
Mr. DENT in two instances.
Mr. ANNUNZIO in three instances.
Mr. RARICK in three instances.
Mr. GONZALEZ in three instances.
Mr. TAYLOR in two instances.
Mr. DANIELS of New Jersey.
Mr. BURLISON of Missouri.
Mr. BENNETT in two instances.
Mr. ANDERSON of California in two instances.

SENATE BILLS AND CONCURRENT RESOLUTION REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 353. An act to authorize the Secretary of the Interior to construct, operate, and maintain the O'Neill unit, Pick-Sloan Missouri Basin program, Nebraska, and for other purposes; to the committee on Interior and Insular Affairs.

S. 2350. An act to authorize the Secretary of the Interior to construct, operate, and maintain the North Loup division, Pick-Sloan Missouri Basin program, Nebraska, and for other purposes; to the Committee on Interior and Insular Affairs.

S. 3140. An act to improve the financial management of Federal assistance programs to facilitate the consolidation of such programs; to provide authority to expedite the processing of project applications drawing upon more than one Federal assistance program; to strengthen further congressional review of Federal grants-in-aid; and to extend and amend the law relating to intergovernmental cooperation; to the Committee on Government Operations.

S. 3531. An act to authorize the Secretary of the Interior to disburse funds appropriated by Congress for the planning, design, and construction of recreational facilities in connection with the 1976 Winter Olympic Games; to the Committee on Interior and Insular Affairs.

S. Con.. Res. 92. Concurrent Resolution authorizing the printing of additional copies of the hearing before the Subcommittee on Children and Youth relating to the sudden infant death syndrome; to the Committee on House Administration.

ENROLLED BILLS SIGNED

Mr. HAYS, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 7701. An act to amend the act of August 9, 1955, to authorize longer term leases of Indian lands located outside the boundaries of Indian reservations in New Mexico;

H.R. 10702. An act to declare that certain federally owned land is held by the United States in trust for the Fort Belknap Indian Community;

H.R. 13025. An act to amend the act of May 19, 1948, with respect to the use of real property for wildlife conservation purposes;

H.R. 15495. An act to authorize appropriations during the fiscal year 1973 for procurement of aircraft, missiles, naval vessels, tracked combat vehicles, torpedoes, and other weapons, and research, development, test, and evaluation for the Armed Forces, and to authorize construction at certain installations in connection with the Safeguard anti-ballistic-missile system, and to prescribe the authorized personnel strength for each active duty component and of the Selected Reserve

of each Reserve component of the Armed Forces, and for other purposes; and

H.R. 15577. An act to give the consent of Congress to the construction of certain international bridges, and for other purposes.

THE LATE HONORABLE WILLIAM F. RYAN

(Mr. STRATTON asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous material.)

Mr. STRATTON. Mr. Speaker, I have the sad task of advising the Members of the House that our distinguished colleague from New York, the Honorable WILLIAM FITTS RYAN, passed away last night at 8 o'clock in the New York City Memorial Hospital.

I think all of us recognize that BILL RYAN was in many respects one of the most courageous and conscientious Members of this body. We can all recall in early August his appearance in this Chamber, in spite of the illness that subsequently was to take his life, in order to be able to vote on the vital end-the-war amendment that appeared in the foreign aid bill pending just before the recess.

This was typical of BILL RYAN because whatever he set his heart to, whatever he felt was important, he pursued that end and objective regardless of the effort or the involvement that might be incurred. In fact, one of the remarkable things about BILL RYAN was that, even during the rather bitter primary contest that he was involved in earlier this year in June, he maintained that remarkable attendance record of his in this body even during that time.

In fact, all of us who knew BILL RYAN recognized that during the past few years, as his illness did take its gradual toll on his health and his great capabilities, he demonstrated remarkable courage, with never a single concern for himself or for his own feelings. In spite of the limitations that his illness gradually placed upon him and the special efforts that were required for his participation in debate, he nevertheless was constantly on the job, constantly following through on the measures in which he believed, in spite of the demands of his illness, and the pain that he must have been suffering.

Congressman BILL RYAN was a New York City man. In fact, he was at one time the reform candidate for mayor for the city of New York—and yet his first home was in my part of the State, from upstate New York. His father was presiding judge for many years of the New York State Court of Claims. His birthplace was in Albion, N.Y., where he was born in 1922—in Orleans County, a county where my own home was located for many years.

BILL RYAN was the first of the "reformers" from New York City to come to this body. In fact, he was a successful exponent of the "new politics" long before anybody used that phrase, or even before people knew just what the "new politics" really meant.

I remember first meeting BILL RYAN in 1958 at the Democratic State Convention in Buffalo when there was then, as so often marked our party conventions in New York in subsequent years, a rather bitter controversy in connection with the nomination for U.S. Senate that in some sense shaped the future of our party in New York for many years to come.

BILL RYAN was leading the so-called "reform" delegation from New York City on the floor of that convention that year in what proved to be a rather historic battle. I remember it well, for I had just been nominated for Congress myself following a rather difficult primary battle against the established party organization in the State and in my own five-county district. We met at that time and found we shared a good many common interests. BILL told me then that he intended to run for Congress, and 2 years later, of course, in 1960 he was successful in being elected to Congress as the first member of the so-called reform movement from New York City, more exactly called the New York State Committee for Democratic Voters. That committee began its effort to take over the representation in Congress from New York State in 1960—and we are well aware that today, 12 years later, it has succeeded in winning an impressive majority of those New York City congressional seats. It was BILL RYAN who set the pattern and led the way.

BILL RYAN came to this Chamber, as we are all aware, as what might be regarded as an antiboss, anti-Establishment Congressman, and a strong supporter of the full liberal philosophy in the Democratic Party. In this House he was one of the leaders of the Democratic Study Group, and a strong believer and strong exponent of its philosophy.

He was also one of the most tireless workers in Congress. I do not know anyone in the years I have been here who has worked harder and who spoke out more frequently in support of the things in which he believed. And he was one Member who certainly did his homework. I am sure you recall seeing him, as I do, sitting in the forward sections of the Chamber even late into the afternoon during the special order period writing out his remarks by hand or correcting his RECORD copy, to make certain that his views on the issues in which he believed were properly recorded in the RECORD. He was certainly not hesitant about standing up and speaking out for the things in which he believed.

There is no question about the fact for example, that he was one of the first to speak out in opposition to the Vietnam war. I know that because I debated him on that subject on more than one occasion. He was one who we remember also took his "lumps" in this Chamber for opposing the established organization. For many years he remained on a committee which was not his first choice. Even though he watched Members who were senior to him achieve membership on committees on which he wanted to be a member, he remained on that committee and eventually had to appeal to the Democratic caucus to receive from his fellow Democrats the committee assignment to which he believed he was entitled.

Yet it is also true, and we remember this especially today, I am sure, that BILL RYAN was a really "sweet" guy, a person whose views might often be different from ours and yet one who always was friendly, cordial, pleasant, never nasty, never bitter in debate, never belligerent, a person with whom one could disagree and yet invariably, day in and day out, would never find disagreeable.

He came to the Congress in 1961 as in a sense a political outsider: The idea that anyone could take on the powerful Democratic organization in New York City and upset it and come to Congress was something really new. Yet in the 12 years that BILL RYAN served here we can truly say he won the respect, admiration, and affection of every single Member of this body.

We all knew last August, when BILL RYAN made that very difficult and courageous journey down here from New York City to be able to vote on the resolution about which he felt so strongly, that except for a miracle he would not be coming back to this Chamber. Yet I know we all hoped that miracle would somehow occur. Today we realize that miracle did not in fact occur. And so in sorrow and yet in pride we salute our fallen colleague and friend, who can be truly said to have died in the service of his country, gallant and courageous to the end.

As Franklin D. Roosevelt once said of another great Democrat in New York State, Al Smith, I believe we can also say of BILL RYAN:

> This was the happy warrior; this was he whom every man in arms would wish to be.

Mr. Speaker, to his parents and to his lovely wife Priscilla and to his four wonderful children I extend on behalf of my wife, Joan, and myself our deepest sympathy in this very dark hour of their loss.

Mr. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. STRATTON. I yield to the majority leader.

Mr. BOGGS. There is very little one can add to the beautiful statement the gentleman from New York has made about our late beloved colleague. The words that he has used are words I think everyone of us would subscribe to. BILL RYAN was indeed conscientious, he was indeed courageous, he was indeed dedicated, he was indeed probably the hardest working Member of this body. It is true too that BILL RYAN was vitally interested in the affairs of the city of New York and the State of New York, and he was also equally interested in the affairs of the Nation.

BILL RYAN was a remarkable man in many ways. I like best the gentleman's description of BILL RYAN's ability to disagree quite passionately and yet never be disagreeable. All of us will miss him here. He made an enormous contribution to this body. As the gentleman from New York said, BILL RYAN did his home work and when he engaged in debate he knew about the subject he was discussing.

He died as I presume we would wish to die—although none of us want to die—serving his country. I am happy that his colleagues and his constituency, many of